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TO

# THE TRAFFIC WORLD

From July to December, 1920

VOLUME XXVI



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# The Traffic World

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## TRANSPORTATION AND THE ELECTION

Transportation questions have not openly figured to any appreciable extent in the campaign ended with the election of Senator Harding, of Ohio, to the presidency of the United States. Senator Harding, to be sure, has ventured some criticism of certain policies of the Interstate Commerce Commission which, right or wrong, we believe he will not press after he takes office, except as he may be able to induce Congress to take his point of view, for we believe second thought will show him that he has nothing to do with the acts and policies of the Commission. Congress is its only master. W. G. McAdoo, on the other side, delivered himself of some remarks in a campaign speech which, under the circumstances, might have been interpreted as committing the Democratic candidate to government operation of the railroads. At least, in a speech for his candidate, Mr. McAdoo championed that policy of regulation. Whether or not he was expressing the views of his candidate or his party on that matter, there was undoubtedly an under current of feeling that Democratic success might mean a tendency toward government operation, not only because of the fact that the present administration has seemed to favor that policy with respect to the railroads, but because paternalism has seemed to be its policy, in greater or less degree, with respect to government generally. In addition, the radical element of railroad labor that is supposed to believe in the Plumb plan was supposed to favor the Cox candidacy.

We do not mean to say that the election of Governor Cox would have meant government operation or the Plumb plan. In the first place, he could not have accomplished either of them, had he wished, and, in the second place, we do not know that he would have wished to do so. Nor do we mean to say that the feeling we speak of played any important part in the result, though it was undoubtedly one of the minor factors that contributed to the avalanche that has swept Senator Harding into office.

If we may analyse, to some extent, the result of the election without being accused of talking politics, we venture the opinion that one of the main reasons for the overthrow of the party now in power was the feeling that the present administration was too paternalistic in its policies—and undoubtedly the railroad phase of this paternalism bore an important relation to the whole. In this sense transportation did figure in the election, perhaps to a greater extent than can be known. That many of President Wilson's close friends, supporters, and appointees in office were paternalistic in their tendencies, especially with respect to the railroads, unquestionably had its effect on the attitude toward the candidacy of Governor Cox of men to whom transportation questions seem important. It worked the other way, no doubt, among the workers in the ranks of union labor who had profited much and might hope to profit more by government control of the carriers, so perhaps it was "fifty-fifty." But, though transportation, like most other domestic economic problems, was so overshadowed in the campaign by the League of Nations issue as to be almost unheard of publicly, it was there, nevertheless.

The result, insofar as this element can be found in it at all, may be taken as notice to those who voted for the Esch-Cummins bill that the country thought well of their work and counted the utterances of McAdoo, Gompers, LaFollette, Plumb and their satellites as of no weight. These men tried to make a railroad issue and have organized labor vote as a class. So it is not to be overlooked that the men who are technically responsible for the transportation legislation of the last session of Congress were kept in office and there is nothing in the returns to indicate that the people think there is anything in the law needing immediate change. Naturally, it is expected that Senator Harding, or those who persuaded him to criticise the assigned car rule, will undertake to ask for a change in the law so that the Commission will not have an opportunity to exercise any discretion in the matter of rules for the distribution of cars. That would be the regular way to get rid of an interpretation that was displeasing to the incoming President. The Commission construed the law to mean what it has prescribed as a rule. Its work there was merely that of saying what, in its judgment, Congress had said. It is easy, if the construction is not in line with what President Harding thinks the rule should be, for Congress to

change the language of the statute so that the rule will be what Harding and his advisers thought they were saying it should be when they passed the transportation bill.

In so far as the election shows anything with respect to the question, it may be taken as an indication that the people do not want government operation or ownership of the railroads. If they do not want it that settles it, whether they are right or wrong, but that they are right will no longer depend on mere theory if the railroads continue their present showing. They are doing what most persons free from the bug of government ownership believed they would do if restored to private control under fairly compensatory rates, and we believe they will do still better.

## RATE COMMITTEE DOCKETS

We are pleased to announce that the transcontinental lines have taken action with respect to publishing a docket of proposed changes in rates, rules, and regulations, and arrangements have been made with the Transcontinental Freight Bureau in Chicago for printing this docket in The Daily Traffic World and in the Traffic Bulletin with the dockets of the other railroad rate committees, some of which we have been publishing for months and others of which (the dockets of the rate committees in Official Classification territory) have been recently added. Now we have them all, we are glad to say, and there is no reason why a shipper or anyone else interested in proposed freight rate changes and in knowing about them as soon as possible, should not keep himself informed.

We have had a good deal to say, at one time or another, about these rate committees and the publication of their dockets, but even yet there seems to be considerable misunderstanding in some quarters. The publication of these dockets is in no sense an obligation imposed on the carriers by law. It is merely a policy undertaken by them, partly out of regard for public sentiment, which demands that there be some such advance publicity as to proposed tariff changes, and partly as a help to themselves, their idea being that they may obtain valuable information by giving shippers a chance to be heard before changes are formally filed, such information, in many cases, serving to alter their plans or to postpone them indefinitely. This was perhaps the one valuable thing that came out of the system of rate committees in vogue during government operation of the railroads.

The shippers must remember that, though the carriers give them the opportunity to be heard, the carriers are under no obligation to the shippers to inform them as to what decisions have been reached. The carriers simply tell the shippers what they have in mind and let the shippers say what they think about it or do anything else that may occur to them as possible effective means of changing plans they think are bad. The filing of or failure to file a tariff tells the story as to the decision reached by the rate committee. The shippers, then, have every recourse that is afforded by the law, just as if there were no voluntary rate committee system. In other words, the rate committees operate in exactly the same way as do the classification committees. Shippers are put on notice as to proposed classification changes and may be heard fully. Then they wait and see what the carriers do. If the carriers, as shown by proposed classification changes filed as tariffs, have not been affected by the arguments of protesting shippers, then the latter may proceed under the law to preserve their rights.

Shippers must keep all this in view in making their judgments as to the value of the docket system. On the other hand, the carriers, though they are not legally bound in this matter, must act in good faith and with absolute openness and frankness with the shipping public if the plan is to be a success. It is founded on the theory of cooperation, and cooperation is successful only when honest. For our part, we think the carriers are entitled to credit for putting into effect this system and we believe their spirit is such as to make it successful if shippers take the right view.

In our Daily Traffic World (and in our Traffic Bulletin, for those who can wait until the end of the week for their information) we now have a medium through which the shipper or other interested person may keep himself fully and accurately informed as to tariff changes, actual or proposed, from the time when their conception is first announced by the carriers until they take effect in legal tariffs. Every proposed tariff change in any part of the country is first announced by the rate committee or bureau having jurisdiction in that territory. We publish the docket making the announcement. If no tariff is ever filed, that ends the matter. If a tariff is filed, an abstract of it is published by us, with its effective date. If no more is heard of it, it has become effective and the shipper may obtain it by writing to the issuing carrier or agent. If it is suspended, we chronicle that fact also, with the date to which it is suspended. If the tariff is permitted to go into effect after the period of suspension has expired, the reader knows that fact through our publication of an abstract of the supplement filed by the carrier. If the Commission, before the period of suspension expires, orders the tariff cancelled, then the fact that it is cancelled is made known through the filing by the carrier of a cancellation supplement, of which we publish an abstract. So that, through our publication, one interested may follow every step in the evolution of a tariff from the time when it first begins to be openly considered until it becomes effective or is killed.

In addition to the dockets of all the rate committees and abstracts of all tariffs filed and suspended, we publish in the Daily Traffic World and in the Traffic Bulletin abstracts of all tariffs filed with the U. S. Shipping Board; the docket of the Consolidated Classification Committee; released rate orders; fourth section orders; sixth section orders; tariffs returned by the Commission; and embargo notices, modifications, and cancellations. The effort is to cover every phase of tariff development and change.

## LUMBER PENALTY CASE

**The National Retail Lumber Dealers' Association has been permitted to intervene in No. 11818, American Wholesale Lumber Association vs. Aberdeen & Rockfish et al. This is the case involving the $10 a day penalty on transit lumber.**

# Current Topics in Washington

**Vacancies on the Commission.**—It is regarded as morally certain that from January 1 to March 4 next there will be two acknowledged vacancies and two unacknowledged vacancies on the Commission. There are men in Washington who believe that Messrs. Ford and Potter are serving without proper warrant, although President Wilson caused recess appointment commissions to be issued to them. James Duncan, named as a commissioner at the time the appointments of Ford and Potter were announced, has never come to Washington to serve as a commissioner, so there is now one acknowledged vacancy. Commissioner Woolley's term of office will expire on the last day of the year. The President is expected to send his name to the Senate for another term, but the Senate is expected to hold up the nomination until the end of the Wilson administration. Heretofore when a nomination for a new term has been held up the commissioner has not served under the re-nomination. That was the case with Chairman Clark in 1913 when the Democratic senators held up all the last-hour appointments of President Taft. Clark was immediately appointed a special employe of the Commission, so that the routine work of his office was continued without cessation, but he did not vote as a commissioner. He was made a special employe because Democratic senators assured him that they were holding him up merely as a part of their policy of preventing any of Taft's appointees becoming fixtures in office for years that would run into the administration of the incoming administration of Woodrow Wilson. Perhaps the Commission will do as much for Commissioner Woolley, if he desires to finish the routine work of his office. Under what might be called the comity established when Clark was held up, Woolley might be entitled to reappointment by President Harding, if the Republican senators were willing to say he was as acceptable to them as Clark was to the Democratic senators and to President Wilson. Whether they are ready to say that is one of the things the future will develop. The impression is that Commissioner Woolley will not have such support from Republican senators, all of whom know of his work in behalf of McAdoo at San Francisco, or will know if the question of the appointment of Woolley by Harding should come up. Among men interested in the work of the Commission, Commissioner Potter is regarded as much more likely to obtain support among his political opponents. President Harding must select someone not a Republican, and Potter has commended himself to those who have come into official contact with him.

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**Rates Up and Prices Down.**—With commodity prices coming down and rail rates going up, there are traffic men who wonder if governmental regulation has not again made a mistake—the one that has often been made, and, as many believe, likely to be made again. That mistake is giving relief too late. In this instance the mistake (if there is one) is attributable to Director-General McAdoo and to Director-General Hines. They knew that the rates ordered into effect in June, 1918, were not high enough to cover the cost of operating the railroads. Just how soon Mr. McAdoo knew the fact cannot be definitely ascertained. But Mr. Hines knew it early in 1919. When traffic was at its flood in the fall of that year the rates were bringing in enough to pay cost and leave something for profit, but not enough to do that except when there was so much business that there was no comfort for either carrier or shipper. The regime of the two directors-general, it may be suggested, is not to be designated as a period of governmental regulation. Under federal control the Director-General, in effect, had the power not only to initiate but to regulate, although, in theory, the Interstate Commerce Commission was still the regulating body. It, however, had not the power to regulate upward. That power rested with the Director-General. No increase of rates was made to cover the increases in costs decreed under the various wage adjustments. The McAdoo increase was not big enough to cover the first McAdoo increase in wages and the rent the government had agreed to pay for the use of the railroad property. The Interstate Commerce Commission did not linger long over the question of higher rates. From the beginning to the end, the 1920 advanced rate case lasted not much more than four months. Four months to the man not living in Washington may seem almost an eternity, but it is in excess of the Washington speed limit by a good deal. Four months is as nothing in the life of the officeholder—the man who is technically a servant of the whole people. It is usually only time enough for him to begin to think about beginning to do a definite task. A case in point is the revision begun six months or more ago by the office of the internal revenue commissioner of the treasury decision as to war tax on demurrage, and the definition of demurrage, for tax purposes. It is not yet in sight.

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**The Case in 1914.**—Only once before, so far as known, has there been a case of falling commodity prices and increasing freight rates. That was in the fall of 1914, when the Commission allowed a five per cent increase in freight rates in Official Classification territory. That came in an era of falling prices. There was wonder then how it would work out. Sellers of all other kinds of property and service were reducing prices with a view to coaxing dollars out of their hiding places into the treasuries of the coaxers. The railroads alone said to the possessors of the dollars that the thing they had to sell would cost more. Sellers of neckties, shoes, meats and cloth were inclined to make concessions, while the railroads were going in the opposite direction. In 1907-8, when the bank panic made the country miserable, there was no marked change in rail rates, but commodity prices went down. In the preceding depression, 1893-6, some of the railroads, especially the southern, made panic rates, in the hope of obtaining the scarce dollars. There is no such scarcity of dollars now as there was in the other periods mentioned, but the tendency is downward as to commodity prices, while rail rates are going up. The 1914 experiment had no particular chance to work because the upward trend of prices caused by the war soon made it obvious that the higher rates would not have any deleterious effect on the revenues of the carriers. On the contrary, the increase in tonnage caused by the war gave the railroads comfortable earnings in 1915, big ones in 1916 and almost as large an income in 1917. The 1920 experiment, therefore, it has been suggested, will afford an opportunity to test out whether it will be possible for the railroads to collect their highest rates without causing a reduction in the volume of their business. One suggestion that has been made in the discussion is that even when Ex Parte No. 74 rates went into effect, they were not as high, relatively speaking, as the prices of commodities. Sugar was cited as an example. In 1914 it was about five cents a pound retail. It is now 16 cents in Washington. There has been no such increase in railroad rates. In 1914 the price of stove-size anthracite coal was about $7 a ton. Now it is $15. The average man bought himself a satisfactory pair of shoes for $4. Now he is paying about $9 for shoes not as good. The increase in class rates in Official Classification territory has been 110 per cent and passenger fares have gone up from about 2 cents to 3.6 cents a mile. In other words, freight rates now are, in relation to prices, just about the same as they were in 1914, although commodity prices have been slipping down while transportation prices have gone up.

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**Shippers Must Observe Technicalities.**—Another decision of the Commission which, it is believed, will not set well with the ordinary shipper was made in the E. I. duPont de Nemours case, involving the application of rule No. 77 of tariff circular 18-A. In that case the Commission made compliance with the fourth section depend on an application of the shipper for the enforcement of that rule, notwithstanding that, in prior cases, it had held that that request was not essential in order that the shipper might take advantage of the rule. The opinion in the duPont case is No. 6430. According to Commissioner Aitchison's dissent, the opinion in that case ate up the Commission's prior cases, notably the duPont case in 55 I. C. C. 247. The amusing part of the matter, from the point of view of the man whose dollars are not involved, is that in the batch of cases that contained the duPont case was the decision in the complaint of Frank Samuel against the Philadelphia & Reading. In that case the complainant alleged that a rate of 15 cents on chrome ore from Pottsville, Pa., to Conshohocken was unreasonable because in excess of $1.50 a ton in the reverse direction. The Commission said it was the duty of Samuel to have paid the 15-cent rate before coming to the Commission for relief. It also said the $1.50 rate was available from Pottsville to Conshohocken because such a rate is published from Tyrol and Philadelphia to Pottsville over a route to which Conshohocken is directly intermediate and made available under rule 77, which is a "substantial compliance with the requirements of the fourth section," says the report in the Samuel case. Nothing was said in that case about the necessity for the shipper to ask the railroad company to comply with the fourth section as a condition precedent to the application of a rate that would be in conformity with the terms of the statute. The impression left by a reading of the Samuel decision is that, if the shipper had paid the 15-cent rate instead of offering $1.50 and appealing to the Commission, he would have obtained an order relieving him from the payment of the unlawful rate. He did not do that and his case was dismissed. A reading of the two decisions leaves the impression that, from this time forward, a shipper, in order to obtain what the law seems to say he is entitled to receive, will have to be as technical as an indictment, than which there is no more technical thing on earth. If the man who draws an indictment guesses wrong, the prisoner is at least entitled to another trial, if he does not go free.

**A New Director-General.**—A new Director-General of Railroads is one of the consequences of the election. John Barton Payne, Secretary of the Interior, Director-General of Railroads, trustee of the Shipping Board's Emergency Fleet Corporation and, before he held the offices he is now holding, counsel for the Shipping Board, chairman thereof, and counsel for the Railroad Administration, is regarded as the personal representative of President Wilson. His appointment as Director-General does not necessarily lapse with his appointment as Secretary of the Interior, but no man who knows how close he has been to President Wilson expects him to remain in office after Wilson goes out. The name of Max Thelen naturally comes forward in any consideration of names for the Director-Generalship. Thelen remained in Washington longer than he intended on assurance from the White House that he would be made Director-General. His commission was made out and plans had all been made for his taking over of office when, for some unexplained reason, President Wilson changed his mind—and the name in the proclamation of appointment of a Director-General to serve as agent of the President during the settlement of matters growing out of federal control was changed. In the old days of greater frankness in public affairs, Max Thelen would have been rated as a man who received the worst kind of "double-crossing" and Walker D. Hines as an official whose recommendation in the matter of his own successor was turned down after it was accepted. It is doubtful whether Thelen would come back to Washington, but his friends believe he would appreciate word from Harding that he was willing to show appreciation of the work Thelen did during federal control. Thelen was admired by the representatives of the shippers who came into contact with the Railroad Administration, while Payne irritated them, especially by his decisions about loss and damage claims, reparation, and things like that.

A. E. H.

## CONSTRUCTION OF COMBINATIONS

*The Traffic World Washington Bureau*

The Commission, November 3, authorized the publication of rules for constructing combinations, on short or sixth section notice, in accordance with the following:

"Ordered, that, under the application of all carriers therein referred to dated September 29, 1920 (No. 2814) (F. A. Leland), as amended October 8, 1920, that have lawfully appointed E. B. Boyd, R. H. Countiss, F. S. Davis, W. J. Kelly, F. A. Leland, F. L. Speiden, S. J. Henry and F. W. Gomph as agents, and under the application dated October 11, 1920, No. 2818, of carriers therein referred to that have lawfully appointed F. A. Leland as agent to publish and file in their name, place and stead, tariffs and supplements thereto, the said agents are hereby authorized to publish and file with the Commission a consecutively numbered supplement to I. C. C., U. S. No. 1 (Eugene Morris), such supplement to bring forward all effective matter contained in the tariff as amended, and to increase the figures to be deducted from each factor and added to the sum of the factors 33 1-3 per cent subject to rule for disposition of fractions as shown in the Commission's decision in Ex Parte No. 74, dated July 29, 1920.

"It is further ordered, That the supplement to I. C. C., U. S. No. 1, hereinabove authorized may depart from the requirements of Rule 4 (b) of Tariff Circular 18-A as to naming participating carriers therein and referring to powers of attorney of concurrences in connection therewith.

"It is further ordered, That tariffs issued by individual carriers or agents which now provide a basis for constructing through rates, in the absence of joint through rates, on the commodities specifically named in General Order No. 28 and on petroleum and its products by combining separately established rates on said commodities, may be revised to read as follows:

Where no published through rates are in effect from point of origin to destination on—(commodity) and there are in effect thereon separately established rates to and from junction points, the through rate for continuous rail shipment thereof will be arrived at in the following manner:

Deduct from each separately established rate factor —— cents per 100 pounds, and to the sum of the factors thus obtained add —— cents per 100 pounds to obtain the through rate.

NOTE.—When tariffs now in effect contain combination rules the application of which is restricted to separately established commodity rates or which provide that the combination rule will not apply in connection with proportional rates, the above rule may be modified so as to continue such restrictions.

Under the above rule the figures which are to be deducted from the current factors and added once to the total are those applicable on the same commodities shown in General Order No. 28 increased $33\frac{1}{3}$ per cent subject to the rule for disposition of fractions approved by the Commission in its opinion in Ex Parte 74, except that on petroleum oil and its products, rated fifth class in Official, Southern and Western classifications, 6 cents must be deducted from each factor and 6 cents added once to the sum of the factors so obtained.

"Schedules issued under this special permission may contain the following advice:

It is the purpose of the carriers parties to this tariff to cancel the above rules for constructing combination rates on—(the date to be six months from the effective date of the revised rules herein authorized).

Upon reasonable request (see Note 1) on or before (same date as above) carriers' parties hereto will establish on the commodities named herein through rates which will be in accordance with the provisions of this tariff—either:

(a) By publication of joint through rates or basis not higher than herein prescribed, or

(b) By publication of proportional rates to and from basing points the sum of which will not be higher than basis for through rates herein prescribed.

NOTE 1.—Such joint through or proportional rates will, upon request of shippers, be established where there is a substantial movement. The request should be addressed to the initial carrier or publishing agent, and should state the point of origin, point of destination, amount to be shipped, consignee, and probable extent or frequency of movement. If new facilities have been established for the handling of the commodity at destination, that fact may be stated.

"It is further ordered, That all individual carriers or their duly authorized agents are hereby authorized to specifically cancel on notice of five days all rules for the construction of combination rates now under suspension in I. & S. Docket No. 1200, and First Supplement Order thereto and previous rules remaining in effect due to such suspension and publish and apply in lieu thereof the rule herein approved.

"It is further ordered, That schedules hereinabove referred to may be made effective on five days' notice to the Commission and the general public by posting and filing in the manner required by law.

"This permission does not waive any of the Commission's published tariff regulations, nor any of the provisions of the Interstate Commerce Act, except as herein noted. It is void unless schedules issued thereunder are filed with the Commission within thirty days from the date hereof. Schedules issued hereunder must bear the notation, 'Issued on five days' notice, under special permission of the Interstate Commerce Commission, No. 50938, of November 2, 1920.' Consecutively numbered supplement to I. C. C., U. S. No. 1, in addition, must bear the notation, 'Departure from the requirements of Rule 4 (b) of Tariff Circular 18-A is authorized by special permission of the Interstate Commerce Commission, No. 50938, of November 2, 1920.'"

## CLAIMS FOR REPARATION

*The Traffic World Washington Bureau*

The Commission has put out a revised form for the presentation of claims for reparation on the special or informal docket, as it is better known. The revised form was served on the carriers in the early part of September. The Commission did not promulgate it in the usual form, by putting it on the table in the public information room. Inasmuch as the form is used by a railroad when it agrees to ask the Commission for permission to make reparation on account of an excessive, unreasonable rate, which has been reduced and which the Commission is willing to maintain for a year, the new form was not thought to be of any particular interest to shippers.

Revision consisted of the elimination of things that had been rendered obsolete by the change of the name of the act creating the Interstate Commerce Commission and prescribing its powers and duties from "act to regulate commerce" to "interstate commerce law," the Spiller case decision by the Supreme Court of the United States, and language relating to the filing of formal complaints, which might be construed as an attempt on the part of the Commission to reduce the two years' period, allowed by section 16 as the time in which formal complaint might be filed, after the transportation had taken place.

The rule as to filing claims as it now reads is that a case which could not be settled on the special or informal docket can not be brought up for re-consideration unless such application for re-consideration is filed within six months of the time the Commission notifies the parties that the case is of such a nature that it cannot be settled informally; nor filed as a formal complaint unless that be done within six months after the Commission has given notice that it could not be settled informally. A proviso has been attached to the rule relating to formal complaints to show that it does not apply to claims for reparation filed within the time limits of section 16 of the interstate commerce law, which allows shippers two years in which to file claims, or complaints.

The instructions have been revised so as to eliminate the instruction that claims must be filed within two years from the date of the shipment, because the Supreme Court of the United States, in the Louisville cement case, said that the two years began to run from the day the illegal charge was collected and not two years from the delivery of the freight. As revised, the instruction on that point is that "under section 16 of the interstate commerce act claims for reparation are absolutely barred if not filed within two years from the date the cause of action accrues, except that under section 206 (f) of the transportation act, 1920, the period of federal control shall not be computed as a part of the period of limitation in causes arising prior to federal control."

### NEW LOGGING ROAD

The Coon Bayou & Arkansas City Railway Company has applied to the Commission for a certificate of convenience and necessity authorizing it to construct a line of railroad in Desha County, Arkansas, for the carriage of logs. The road will connect with the Missouri Pacific.

# Decisions of Interstate Commerce Commission

## DEMURRAGE ON EXPORT FREIGHT

Adoption of the Spens plan for getting rid of the vexatious question of demurrage on "lighterage free" export freight at New York has been recommended by the Commission in a report on No. 10824, New York Board of Trade and Transportation vs. Central Railroad Company of New Jersey et al., opinion No. 6432, 59 I. C. C. 205-11, written by Commissioner Eastman. That plan was put into effect by C. E. Spens, acting for Director Chambers, at Pacific coast ports in September, 1919, and at Atlantic and Gulf ports just before the end of federal control in February of this year. Not all steamship companies, however, became parties to the plan. It is the idea of the Commission that they should become parties, and thereby dispose of the question by making the railroad responsible for demurrage if its failure causes detention of the lighter, the steamship if its course causes delay, and the consignee if the fault is his. The north Atlantic lines fought the plan, but the Shipping Board signed the agreement on behalf of its lines, and that acted in a coercive way on the boat lines not under the control of the Board.

Technically, however, the complainants lost their case because, on the report, the Commission based an order of dismissal, holding that the demurrage rules at New York governing the transfer of freight received on domestic bills of lading, and then transported, the transfer being accomplished by lighter, had not been shown to be unreasonable or unduly prejudicial. Dismissal, however, it is shown by the report, is not to be taken as evidence that the Commission is satisfied with the situation that prevailed before the Spens plan was brought into operation. That situation, however, was made better by the adoption of that plan, hence the recommendation that it be extended.

The complaint was based on the fact that the shippers had no control over their goods after they gave orders to the railroad companies to lighter their goods to the steamships. Nevertheless, they were being held responsible for the demurrage resulting from the rail and water carriers' failure to accomplish the transfer of the freight from the lighter to the ship within the free time, even when the delay was due wholly to the inability of the ship to receive the freight after it had given notice to the shipper that it was ready to receive.

Commissioner Eastman said that confusion arose from the failure of the complainants to recognize that in the transaction the ship was the consignee's agent, and not a carrier with which the rail carrier had made arrangements for a joint handling of the freight. He said that the failure of the ship to receive the freight within the free time was, in legal effect, the same as the failure of the consignee to remove his freight from a car. Efforts, he said, had been made to compel the steamship companies to be responsible for detention of the lighters of the railroad companies in cases in which they had issued permits to consignees to send their freight to ships, but the court, in Central of New Jersey vs. Anchor Line, 219 Federal, 716, held that the steamship company was not a party to the contract of transportation over the rail lines, and cannot be held liable for detention.

The steamship company having been held not to be a party to the contract, the rail transportation ends when the freight is tendered to the steamship company, which therefore is acting as the agent of the shipper. Mr. Eastman said that, in law, the demurrage, generally, is caused by the act of the agent of the consignee and the relief is to be had, if at all, by proceeding against the agent of the shipper. On account of the long delay in reporting the facts, as a practical matter, the shipper has no chance of recovery from the steamship company.

The rule specifically under attack was the one requiring the shipper to guarantee the payment of demurrage. Mr. Eastman had to admit that inasmuch as the carrier has the right to demand prepayment of charges, it could require a guarantee that demurrage would be paid, as a condition precedent to the movement of freight, by lighter, from the rail terminals to the ships.

Commissioner Eastman said the Commission could not make a definite ruling, on the suggestion, made at the argument, that before sending out the freight by lighter, the rail company require a guaranty from the carrier by water that it would pay demurrage on detention caused by it, because there might be objections to that which had not been stated either in the hearing or the argument.

Another specific attack was on a rule, in the form of exception (b) providing for a pro-rating of the demurrage among the consignees whose freight remains on the lighter at the expiration of the free time. The examiner, in his report, recommended a re-framing of the rule "so as to clearly and affirmatively provide that each consignee shall be chargeable for demurrage for the period in excess of the free time during which he detains the lighter or barge and no more."

Mr. Eastman said that that would be such a refinement of the rule and practice as to make collection of demurrage almost, if not altogether, impossible.

## RATE ON BOX SHOOKS

The Commission has dismissed No. 10707, E. I. duPont de Nemours & Co. vs. Boston & Maine et al., opinion No. 6430, 59 I. C. C. 199-201, holding that the sixth class rate on box shooks from Deering Junction, Me., to Newbridge and Wilmington, Del., and Parlin, N. J., was not unreasonable but in violation of the long and short haul part of the fourth section. The complaint, however, was dimissed on the ground that there was no proof of daamge, hence there could be no reparation.

In September, 1917, the class rate of 15.8 cents was increased to 18 cents in accordance with the Commission's permissive order in the fifteen percent case. At the same time the carriers filed tariffs to increase a commodity rate of 15.8 cents to the same extent that the class rate from Deering Junction was increased. Prior to the increase in class rates, the rates from Deering Junction and beyond were the same. Some, however, were published as class and some as commodity rates. The Commission suspended the commodity tariffs so they did not become effective until March, 1918. In the interval the shipments were made.

According to the testimony the complainant twice wrote the agent of the Boston & Maine inquiring whether rule 77 of Tariff Circular 18-A would be followed and the rate from the more distant points made applicable at the intermediate point. The letters did not directly request that the lower commodity rate of 15.8 cents be protected under that rule, which the Commission, in prior cases, had said resulted in substantial compliance with the fourth section. The complainant, in one letter, called attention to the fact that the fourth section would be violated if the carrier applied the lower commodity rate from the more distant points and collected the higher class rate from the intermediate, and asked whether the former rate of 15.8 cents would be established from Deering Junction and Portland. In a later letter the complainant observed that if and when the Commission allowed the commodity rate to be raised, there would be no fourth section departure, but, as stated in the report, "did not specifically request such establishment."

The rule says that "upon reasonable request" the carrier will establish the lower rate applicable from the more distant point, from an intermediate point."

In this case the Commission decided that the "reasonable request" was not made, and therefore the Boston & Maine, in the absence of a showing of damage, may retain the money collected in violation of the fourth section, because the two letters written by the complainant on the subject of the violation were not requests for the establishment, on one day's notice, of a rate that would not be in violation of the fourth section.

Commisioner Aitchison dissented from the decision on the ground that prior decisions of the Commission established that "a request for the publication of a rate under that rule (No. 77) prior to the shipment is not essential in order that a shipper may take advantage of such provision." In support of that declaration he cited duPont de Nemours & Co. vs. Director General, 51 I. C. C. 247; Hermann & Co. vs. N. Y. N. H. & H., 51 I. C. C. 118; and Sunderland Bros. Co. vs. C. B. & Q., 51 I. C. C. 185. Aitchison's dissent is notice that, in his opinion, the Commission has reversed its decisions in the earlier cases, one of which was brought by the complainant, whose traffic manager wrote the two letters on the subject which the Commission's report held were not requests that the Boston & Maine observe the rule for intermediate application, which the Commission had held would be a substantial compliance with the law.

In this instance, the possibility of a violation of the fourth section was created by the Commission. It allowed the sixth class rate to be put up, but it suspended a commodity tariff, which, if allowed to become operative when proposed by the carrier, would not have resulted in any departure from the fourth section. But the Commission suspended it. The complainant knew that there was a technical violation of the fourth section and inquired whether the railroad would observe rule No. 77 of Tariff Circular 18-A, as promised in its tariff. The railroad agent, in answer to the question as to whether the railroad would establish the lower more distant rate from Deering Junction and Portland, answered that the Commission, in Ex Parte No. 57, did not permit an increase in commodity rates. Thereupon the agent of the complainant observed that he

knew that the fourth section violation would be removed, automatically, if and when the Commission allowed the suspended commodity tariffs to become operative, because they would restore the parity that existed at the time when the sixth class applied from Portland and Deering Junction, and when the sixth class from those points was published, as a commodity rate, from more distant points because the desire of the railroads was to put shippers of box shooks from that general region on an equal footing.

Examiner John T. Money, in his tentative report, recommended a holding that the sixth class rates from Deering Junction and Portland were unreasonable to the extent that they exceeded the lower commodity rates from more distant points, and that reparation be awarded. He based his recommendation on some of the decisions Aitchison quoted in his dissent.

## LUMBER, ROCK ISLAND TO EL PASO

The Commission has dismissed No. 10866, Cobbs & Mitchell vs. Ann Adbor et al., opinion No. 6423, 59 I. C. C. 179-82, holding that a proportional rate on lumber from Rock Island, Ill., to El Paso, of 38.5 cents, which was the key rate in the contention of the complainant, was legally canceled on April 1, 1916, on all traffic except to Mexico; and that the rates of 68 and 65.5 cents in effect from Cadillac, Mich., to El Paso were not unreasonable.

Incidental to the decision is a holding by the Commission, speaking through Commissioner McChord, that the definition of a proportional rate contained in Conference Ruling No. 304 (b) applies only to a proportional rate in which there is a fourth section question, and is not a general definition that a proportional rate is one applicable to a movement wholly subject to the interstate commerce act.

Prior to April 1, 1916, there was a rate of 33.5 cents on lumber from Rock Island, Ill., to Texas common points. By adding the differential territory arbitrary of five cents, the complainants claimed a local rate of 38.5 cents to El Paso for use in constructing through combinations to destinations in Arizona and New Mexico.

The railroads claimed that the rates to El Paso for use in constructing rates on domestic traffic were canceled on April 1, 1916. The complainants contended that there never had been a legal cancellation and pointed out wherein the tariff agents had failed to comply, in the matter of an index and appropriate references, with the rules contained in Tariff Circular 18-A. They also made the point that the contention of the railroads that the 38.5-cent rate was a proportional for use in constructing rates into Old Mexico was not sound because the conference ruling hereinbefore mentioned defined a proportional rate as one covering traffic wholly subject to the interstate commerce act.

McChord, in his report, said there was substantial compliance with the tariff construction rules and that the conference ruling was made in connection with a fourth section matter, adding that not every proportional rate must conform to the definition therein made. He said the 33.5-cent rate and the five-cent arbitrary remained in effect as a proportional rate on traffic destined to Mexico until canceled under authority of General Order No. 28.

Allegations that the rates in question violated the second and third sections were made in the complaint, but, according to McChord, there was not any substantial evidence in support of them, because the complainant chose to rest the case on the question of tariff interpretation. Therefore, he did not discuss the allegations of unjust discrimination and undue prejudice.

## LIMESTONE CHARGES IN BUFFALO

A finding of unreasonableness and an award of reparation have been made in No. 10481, Rogers-Brown Iron Co. vs. Director-General, as agent, opinion No. 6425, 59 I. C. C. 186-90, as to charges on 2,110 carloads of limestone, moved between June 25, and November 8, 1918, between lake front docks and furnaces of the complainant, both within the city limits of Buffalo. After protest the charge was reduced to $5 per car on November 9. The charges were increased from $2.60 per car to an average of $13.34, or from $8.34 to $13.34 per car.

The work was done by the Pennsylvania. It defended the charges on the ground that the service was a line-haul matter, although the work was done by yard engines and crews. The increase was therefore one cent per 100 pounds, under that part of General Order No. 28 authorizing a one-cent increase on stone hauled on the main line. The charge for the service, however, was carried in a switching tariff, to which fact Commissioner Eastman, author of the report, called attention.

The Pennsylvania called attention to the fact that it had to provide empty self-cleaning hopper cars, just as if the traffic were to have been hauled from Buffalo to New York City, or sent to any other place that would have involved what would have had to be a road haul. In answer to that the complainant showed that the Pennsylvania had employed in similar work in Buffalo about 200 hopper cars, so that the work of obtaining cars for the business of the complainant was not any more arduous than would have had to be done in switching around in the yards.

Commissioner Eastman said that $7.50 would have been a reasonable charge and reparation is to be made to the basis of that charge.

## OVERCHARGES ON LUMBER

In a decision on No. 10942, Watters-Tonge Lumber Co. et al. vs. Baltimore & Ohio Southwestern et al., opinion No. 6438, 59 I. C. C., 229-31, the Commission held that the carriers illegally collected the Louisville combination on a number of shipments of yellow pine, through Cincinnati via Louisville, from points in Alabama, to northern and eastern destinations. They collected the combinations instead of the joint through rates via Cincinnati, because they said there were no divisions via Louisville through the Cincinnati gateway. The Commission said that that fact was not material, that the tariffs did not restrict the routing, nor did they forbid reconsignment to embargoed points. Reparation is to be made to the basis of the joint through rates through Cincinnati.

When the shipments were started from Akron, Sweetwater, and Salco, Ala., in the fall of 1917, embargoes had been placed against shipments through Potomac Yards. Part of the time the Cincinnati gateway was also embargoed.

Instead of routing through to the final destinations, the shippers consigned to Louisville and Birmingham and then reconsigned to New York destinations and Annapolis, Md. The Annapolis shipment reconsigned from Attalla, Ala., to Chattanooga and finally to Maryland's capital, the Commission said, was the only shipment on which the correct charges were collected.

No routing instructions were given beyond Louisville and Birmingham. There was nothing in the tariffs to forbid reconsignment to embargoed points on the joint through rates. Therefore, the Commission said the joint through rates were applicable, although the movement through Cincinnati via Louisville was unusual. The tariffs, the report of the Commission said, gave the right of reconsignment, at the joint through rates, without restriction as to routing. It made the point that, under the tariffs, the shippers could have routed via Louisville to final destination. Instead of doing that they consigned to Louisville and reconsigned from there.

Commissioner Eastman dissented, for the reasons set forth in Meads Lumber Co. vs. Director-General, 59 I. C. C., 243.

## LUMBER TRANSIT PRIVILEGES

Holding that the carriers had justified the proposed change in their tariffs, the Commission has vacated its suspension order in I. and S. No. 1193, Transit Privileges on Rough Forest Products, Opinion No. 6422, 59 I. C. C. 176-8 (see Traffic World, Oct. 30). The tariffs suspended until November 27 will become effective as soon as the carriers can cancel their suspension supplements.

Under the revised tariffs it will be necessary for users of the proportional rates on rough lumber, between stations in Arkansas, from Arkansas and Louisiana points to Memphis, and between points in Arkansas, Louisiana, Missouri and Oklahoma, to ship out finished product tonnage equaling 40 per cent of the weight of the inbound "rough green" lumber.

The tariffs that have been under suspension will restore the transit privileges so far as rates to and from the transit points are concerned to what they were prior to March 20, 1915. On that date the Arkansas commission ordered the railroads to allow the use of proportional rates to the milling points on condition that the users of transit send out finished products equal to 40 per cent of the weight of the rough lumber brought into the mills. In the publication of the revised tariffs the carriers omitted the word "green" so that the users of the transit proportionals have been able to bring in dried rough lumber which weighs less than the rough green and obtain the benefit of the transit by shipping out no more than 40 per cent of its weight in finished products.

The action of the Arkansas commission, while limited to that state,, caused a competitive condition that forced the application of the state rule to interstate traffic.

## RATES ON PULPWOOD

A ruling of condemnation as unreasonable and an award of reparation have been made in No. 11016, D. M. Bare Paper Company vs. Richmond, Fredericksburg & Potomac et al., opinion No. 6424, 59 I. C. C. 183-5, the Commission holding that the rates on pulpwood from points in Virginia to Roaring Spring, Pa., were unreasonable because in excess of 14 cents from Lorton and Occoquan; 14.5 cents from Cherry Hill and Quantico; 15 cents from Widewater and Brooke; 15.5 from Fredericksburg; 16 cents from Summit, Guinea, Woodslane and Milford, and 16.5 cents from Penola, Ruther Glen and Doswell. Reparation is to be made to the basis of the rates mentioned. The higher rates were condemned because in excess of the rates to Williamsburg.

## RATE ON CHROME ORE

The Commission has dismissed No. 10960, Frank Samuel vs. Philadelphia & Reading et al., opinion No. 6426, 59 I. C. C. 190-2, holding that the rate on chrome ore returned from Pottsville, Pa., to Conshohocken, Pa., was not unreasonable. The ore was rejected when it arrived at Pottsville, to which it had moved at a commodity rate of $1.50 a ton. The rate in the opposite direction was 15 cents per 100 pounds. The complainant desired a holding that the rate to Conshohocken was unreasonable to the extent it exceded the rate in the opposite direction, but the Commission did not agree to that.

## RATE ON SCRAP IRON

A holding that the rate on scrap iron from Lafayette, La., to East St. Louis was unreasonable and that reparation should be made down to the basis of a rate of 26 cents has been made in No. 11092, Cohen-Schwartz Rail and Steel Co. vs. M. L. & T. R. R. & S. S. Co. et al., opinion No. 6431, 59 I. C. C. 202-4. Fourth section relief has been denied, in fourth section order No. 7737, on the ground that the route over which the shipments moved was not more than 15 per cent longer than the direct route, and that fourth section relief on account of circuitousness of the route was not justified.

## RATE ON GAS OIL

A rate of 19.5 cents on gas oil from Ponca City, Okla., to Neodesha, Kans., has been found unreasonable and unduly prejudicial to the extent that it exceeds a rate of 14.5 cents from Cushing, Okla., to Neodesha, in No. 10855, Empire Refineries, Inc., vs. A. T. & S. F. et al., opinion No. 6433, 59 I. C. C., 215-17. The defendants admitted that under the existing group adjustment the rate on gas oil from Ponca City to Neodesha should not be higher than the rate from Cushing to the same destination. The Commission's order requires the carriers to establish the rate found reasonable and non-prejudicial on or before January 3, 1921. The rates under discussion are those which were in effect prior to the increases authorized in increased rates, 1920, 58 I. C. C., 220.

## RATES ON COAL

By an order in No. 11156, Central Pennsylvania Lumber Co. vs. B. & O. et al., opinion No. 6429, 59 I. C. C., 197-8, the Commission requires the defendant carriers to establish on or before January 3, 1921, a rate on coal from Lucinda, Pa., to Ricketts, Pa., via Waverly, N. Y., not in excess of 20 cents per long ton over the rate contemporaneously applicable from Lucinda, Pa., to Bernice, Pa.

The complainant attacked as unjust and unreasonable the rates charged on 52 carloads of coal shipped between February 27 and October 14, 1918, from Lucinda, Pa., to Ricketts, Pa. The Commission found that the rate charged on the shipments which moved prior to June 25, 1918, was unreasonable to the extent that it exceeded $2.05 per long ton; that the rate charged on shipments that moved on or after June 25, 1918, was unreasonable to the extent that it exceeded $2.50 per long ton, and that the present rate is and for the future will be unreasonable to the extent that it exceeds or may exceed by more than 20 cents per long ton the rate contemporaneously applicable from Lucinda, Pa., to Bernice, Pa., via Waverly, N. Y.

An award of reparation was ordered but the exact amount could not be determined on the record.

## ST. LOUIS ALLOWANCE FOR DRAYING

Although carriers serving St. Louis and East St. Louis pay the Terminal Railroad Asociation and certain drayage companies mentioned in their tariffs one cent per 100 pounds for taking freight from East St. Louis to St. Louis for delivery at the last-mentioned point, a shipper does not have the option of taking delivery at East St. Louis and receiving like compensation for doing his own draying from East St. Louis to St. Louis. That is the effect of the Commission's decision in No. 10841, A. Geisel Manufacturing Company vs. Baltimore & Ohio, opinion No. 6427, 59 I. C. C., 193-4. The complaint has been dismissed, the Commission holding that the failure of the carirers to make an allowance to the complainant for draying three carloads of steel from East St. Louis to St. Louis, received in October, November and December, 1917, was not unjust or unreasonable.

The complainant contended that under the St. Louis terminal case (34 I. C. C., 453) it was entitled to that allowance. In that case, however, the Commission explained, the tariffs showed that the allowance was to be paid to the Terminal Railroad Association or to designated drayage companies with which the carriers had made arrangements so as to relieve periodic congestion on the rails of the terminal association. The tariffs did not hold out an option to shippers to take delivery at East St. Louis, one cent under the St. Louis rate. The rates to St. Louis and East St. Louis are the same, the line-haul carriers absorbing the cost of getting the stuff across the river into St. Louis, when the transfer might be accomplished by the terminal association or the designated drayage companies with which they had established what practically amount to through route and joint rate arrangements.

In this case the carrier asked the complainant where the cars should be delivered. It said it would take delivery on the team tracks in East St. Louis. At the hearing it developed that it took delivery there because it thought it could not stand the delay that would follow if it gave directions to deliver in St. Louis. For its own convenience, the Commission held, it took delivery in East St. Louis, such delivery expediting the movement of the freight to the plant in St. Louis. In asking the complainant where it would take delivery the B. & O. was merely trying to find out on what track the complainant wished it to set the cars.

## RATE ON CEMENT

A combination rate of 27 cents on sacked cement from Independence, Kan., to Shamrock, Okla., was unreasonable and unduly prejudicial to the extent that it exceeded 20 cents, the Commission finds in No. 11013, Western States Portland Cement Company vs. Missouri Pacific et al., opinion No. 6428, 59 I. C. C., 195-6. Reparation is ordered on the basis of the 20-cent rate.

The shipment moved from Independence over the Missouri Pacific to Neodesha, Kan., St. Louis-San Francisco to Depew, Okla., and Sapulpa & Oil Field to destination, December 13, 1916. The complaint was filed November 7, 1919. At that time there was a 20-cent rate to Shamrock over the defendants' lines from Kansas City and Sugar Creek, Mo., and Bonner Springs, Kan., where complainant's competitors are located. Reparation to the basis of that rate was asked. Effective May 23, 1917, a joint rate of 20 cents from Independence to Shamrock was established by defendants and this was increased to 22 cents under G. O. No. 28, but no complaint was made of the increase.

The Commission followed its decision in Ash Grove Lime & Portland Cement Company vs. A. T. & S. F., 53 I. C. C., 81, wherein it held that the rate of 27 cents in effect from Independence to Shamrock was unreasonable and unduly prejudicial.

The only defense offered by the defendants was that under the law as it existed at the time of the hearing on January 15, 1920, the claim was barred by the statute of limitations. As to that the Commission said:

> Section 206(f) of the transportation act, 1920, provides that the period of federal control shall not be computed as a part of the periods of limitation in claims for reparation to the Commission for causes of action arising prior to federal control. Excluding that period from the computation, the complaint was filed within two years from the time the cause of action accrued and is thus within our jurisdiction.

## WATER-COMPETITIVE LUMBER RATES

*The Traffic World Washington Bureau*

The Georgia-Florida Saw Mill Association, through W. E. Gardner, its traffic manager, has protested against the cancellation of the so-called water competitive rates on lumber and forest products from Carolina and southeastern territories to northern Atlantic seaboard territory. The probability is that every other lumber organization in the southeastern part of the country will do likewise. It is claimed that cancellation will destroy a relationship in rates on lumber and forest produtcs from mills in the Mississippi Valley on the one hand and mills in the Southeast on the other, that has been in existence for twenty odd years.

Cancellation schedules, effective November 22, have been filed by J. H. Glenn in the form of Supp. 16 to his I. C. C. A-192 and by Cottrell in the form of Supp. 4 to his I. C. C. 281.

Gardner, in presenting his ground for protest, to both the Commission and to the lumber industry adversely affected, contends that the all-rail rates that will be brought into play from the Carolina and Southeastern territories are as high as or higher than the all-rail rates from Mississippi Valley mills, although the distance is less. He carefully avoids taking the position that it is the duty of the rail carriers to meet water competition, which, it is generally believed, would be untenable, because the carrier has the option of meeting or declining to meet the competition of another carrier, limited only by the rule that there must be no discrimination.

In the protest it is alleged that the cancellation will inure only to the benefit of the Pennsylvania and the Baltimore & Ohio, because the southern carriers, right along, have been obtaining their full divisions. It is further asserted that the water-competitive rates were put in in 1898 at the solicitation of the northern lines to obtain some of the tonnage that was moving from southern ports to northern by boat. Competition caused the water competitive rates to spread into the whole of the Southeast.

Absorption of from 50 cents to $3 per thousand feet will have to be made by southeastern mills, Gardner contends, if the cancellation supplements are allowed to become effective, because there will be no increase in the rates from the mills

in the Mississippi Valley. Gardner, in his protest, contends that from 66 to 70 per cent of lumber from the Southeast moves to the north and east and about 60 per cent moves on the water competitive rates.

This is the third effort, according to Gardner, that the railroads have made in three years to get rid of the water-competitive rates. The first was made just before federal control but the tariffs were suspended and a record made before the Interstate Commerce Commission which has never passed upon the subject. Another effort was made during federal control and then came this one. His idea is that the northern lines believe they have so nearly rid themselves of water competition that they can afford to cancel the rates which they caused to be established when the desired to obtain some of the tonnage that was moving by water.

## RECIPROCAL DEMURRAGE PROPOSAL

*The Traffic World Washington Bureau*

Proposal by the carriers to increase demurrage rates is to be met, in Virginia, by a proposal that the railroads pay penalties for failure to provide equipment within a reasonable time after it has been ordered by a shipper.

A hearing on the two kinds of demurrage will be held at Richmond, November 19. This proceeding is the outgrowth of the application of the carriers, through Agent Fairbanks, for permission to make operative the demurrage rates proposed by them in the Fairbanks tariff on the files of the Commission, with December 1 as the operative date.

Under the Virginia law it is made the duty of the state commission to prescribe reasonable demurrage rates to be paid by the shipper when he holds a car unduly and charges to be paid by the common carrier when it fails to furnish a car seasonably or to move it after it has furnished it and the shipper loads it.

## PROTEST DEMURRAGE INCREASES

*The Traffic World Washington Bureau*

The Institute of American Meat Packers issued a statement Nov. 1 to the effect that the efforts of the railroads to increase demurrage rates "will be met with vigorous opposition." Many protests against the proposed demurrage rates, effective December 1, have been filed by packers and others who ask suspension and hearing. In a petition filed with the Commission the packers said shippers had been bearing more than their share of readjustment costs without corresponding improved service, that "alleged detention figures quoted by carriers were based on antiquated statistics and do not disclose true facts as they exist;" that subnormal and crippled yard service throughout the country, together with bunched deliveries, account for much of the detention; that no emergency necessitates even a temporary application of the proposed rates; that shippers feel that existing demurrage rates are adequate; and that if the proposed rates were applied shippers and the public would have to bear the expense of delays over which they had no control, but which were brought about by the carriers themselves.

The protests against the proposed increase in demurrage rates, as a rule, follow the thought expressed by the institute of meat packers that car detention is due in large measure to the frailties of transportation.

No new ideas have developed in the mass of correspondence that has come to the Commission. The issue, it is believed, will be as to whether the detention of cars is due to the inability of the shipper or the infirmity of the carrier. While the Commission has not taken any action on the subject, there is an idea that the suspension board will hold an informal conference at which the shippers will have an opportunity to produce figures, if they can, to show that car detention is more often the result of carrier than of shipper failure. Another idea is that, unless the shippers can show such figures, the increase in rates will be allowed on the theory that where there is no unnecessary detention by shippers the size of the penalty will be of no importance. In other words, if a shipper unloads promptly, the fact that the penalty for detention may be $1,000,000 a day per car, cannot be a burden because he will never have to pay it; whereas if the carrier, by reason of the uncertainty of its service, makes it impossible for the shipper to arrange his business so that he can unload within the free time, by the ordinary diligence of hiring a sufficient number of men, such a penalty would be a hardship.

On account of the criticisms of the value of L. F. Loree's 1913 figures, used by Daniel Willard to enforce a point made by Willard in 1920, it is likely the Commission will give close scrutiny to the figures used by carrier and shipper. Detention figures have never been given such scrutiny as figures used in rate cases have received. As a rule the figures have not been explained or supplemented in any way. They stood by themselves to show that, for instance, in a given city, between certain dates, on so many cars set for loading or unloading by a given railroad, the average detention was so many hours; or that between such and such dates a given shipper received so many cars and released them after holding them an average of so many hours.

No showing has been made that the shipper who released them in, say twenty-four hours, if he had been at all diligent, might have released them after an average detention of only twelve hours, nor that a railroad that showed an average detention of fifty-one hours was lucky to get them released in such a short time, considering that on one day it delivered 110 cars, the next day none, and then on the third, 300 cars, whereas a good average flow of cars to and from that point would have been 175 cars.

The general feeling among those in the Commission who have had anything to do with the matter is that there will be such an inquiry into the subject that, when the decision is made, it will dispose of the matter for a long time, and not be something that will come bobbing up every time there is a car shortage, with carriers asserting that the shortage is due to the shippers and the latter replying that the trouble lies with the carriers.

## TEN-CLASS SCALE BEING MADE

Announcement that the railroads had nearly completed a ten-class scale for Official Classification territory was made by Benjamin Campbell, vice-president of the New York, New Haven & Hartford, at the annual meeting of the Associated Industries of Massachusetts, at Boston on October 29.

"There is now in course of preparation," he said, "for later presentation to the public through the federal and state commissions a ten-class scale in substitution for the present scale of six classes in Official Classification territory. This will conform to the practice existing in Southern and Western classification territories.

"A scale of six classes is inadequate to include a sufficient number of articles of commerce to avoid the publication of a multitude of commodity rates, and the purpose of the enlarged scale, with a corresponding broadening of the classification, is to eliminate as far as possible commodity rates and exceptions to the classification. It means substantially nothing more than the substitution of a consistent and more satisfactory rate structure for that now existing, which is described as more or less chaotic in some parts of the territory involved.

"It will have a tendency toward the simplification of tariffs, a steadying effect upon rates, and prove a long step in the direction of unifying the three classifications, as well as facilitate the publication of through rates to many points where they do not now exist, all of which will work to the greater convenience of the shipping public and a consequent improved relationship between them and the carriers. No part of the plan contemplates the application of a mileage scale of rates differing in substantial degree from that now existing. Freight rates are based upon distance qualified. That is, the rate per ton per mile decreases as distance lengthens."

## PRIVATE CAR MILEAGE RATES

The article on private car mileage rates in The Traffic World of October 23, page 782, was incorrect in part because of the omission of an amendment to the Official Classification rule relating to equalization of tank car mileage, carried in supplement No. 6 of the classification. That omission may create the impression that equalization of tank car mileage is not being required now, though a reading of the whole article shows, in two places, that such equalization is being required, declarations in the first and last paragraphs containing that fact. The intention of the writer of the memorandum about the tariff situation was to use the classification rule that was in effect during the two months of federal control and the one that is now in effect. During federal control, equalization of no kind was necessary because all railroads under control were parts of one system.

## ACCIDENT BULLETIN

*The Traffic World Washington Bureau*

In the year ending December 31, 1919, 6,978 persons were killed and 149,053 were injured in steam railway accidents, as compared with 9,286 killed and 174,575 injured in the year ending December 31, 1918, according to Accident Bulletin No. 74 issued by the bureau of statistics of the Interstate Commerce Commission.

Of the 6,978 killed in 1919, 273 were passengers, 2,138 were employes, and 4,567 were "other persons." Of the 149,053 injured, 7,456 were passengers, 131,018 were employes and 10,579 were "other persons."

The number of killed was less than in any year since 1898 when 6,859 were killed. The largest number of killed in any year since 1888 was in 1907, when the total number was 11,839.

The number of trespassers killed in 1919 was 2,553 as compared with 3,255 in 1918. Trespassers injured numbered 2,658 in 1919 as compared with 2,805 in 1918.

There were 6,904 collisions in 1919 as compared with 8,715 in 1918; 15,897 derailments as compared with 13,568 in 1918, and 22,801 collisions and derailments as compared with 22,283 in 1918.

# INTRASTATE RATE ADVANCES

*The Traffic World Washington Bureau*

The members of the Railroad Commission of California, which did not join with the majority of the other state commissions in filing a brief in the Illinois and New York passenger fare cases, have sent a statement to the Interstate Commerce Commission to the effect that while they recognized "the practical necessity under existing conditions of adopting the Interstate Commerce Commission rates for intrastate rates," they "most emphatically reaffirm our opinion that the powers of state authority over intrastate rates have not been nullified or reduced by the transportation act."

The California commission, as has already been announced, authorized the same percentage of increase in intrastate rates as the Interstate Commerce Commission authorized in interstate rates. In view of the attitude taken by the majority of the state commissions in regard to the intrastate rate situation, the reasoning of the California commission in its opinion in the California intrastate rate case is of interest. Briefly, the position of the commission was that while it did not abdicate any of its functions in rate fixing, not to have granted increases equivalent to those authorized by the Interstate Commerce Commission would have been against the public interest.

"We have given this matter very careful consideration and in doing so have attempted to give weight to the probable consequences of proceeding upon either of these alternatives," the California commission said in its opinion, referring to the questions of evidence and proof in support of the carriers' application for increases equivalent to those fixed by the Interstate Commerce Commission. "We realize that without requiring more evidence than is now before us in this proceeding to impose on intrastate business the identical percentage authorized by the Interstate Commerce Commission would, in effect, be the fixing through us of state rate by the Interstate Commerce Commission. Whether or not this constitutionally may be done is a question we do not consider it our function to decide. On the other hand, to proceed in the usual manner as though this were entirely an independent proceeding would result in serious delay, as it is evident that to gather and submit adequate data upon which to base a sound judgment of what practically all transportation rates in California ought to be, would require many months and all possibility of immediate relief to the carriers, found to be imperative by the Interstate Commerce Commission, would disappear.

"This, however, is not the most serious result of independent action by this state. If this commission, under the circumstances that now confront us, fixes state rates regardless of the order of the Interstate Commerce Commission, and if such rate fixing resulted in a return to the railroads of the Mountain Pacific group less than 6 per cent authorized by the the Interstate Commerce Commission, either the Interstate Commerce Commission must further burden interstate commerce with rates high enough to make up the deficit resulting from the California action or, if legally possible, the Interstate Commerce Commission would be compelled to overrule this commission, or the Esch-Cummins act would be a demonstrated failure.

"It appeals to us that if each state in a given group insists upon wholly independent action and judgment, the whole spirit and purpose of the Esch-Cummins act is in danger of nullification.

"That act, in terms, provides a scheme whereby individual railroads and particular states are expected, and no doubt will, produce more than a 6 per cent earning upon the rate base fixed by the Interstate Commerce Commission. This is clearly indicated in the act because it is provided that where a given railroad earns more than 6 per cent, the overplus is devoted to certain prescribed purposes.

"There can be no doubt that, in order to prevent the annihilation of some of the less profitable roads, it was the purpose of Congress to authorize rates which, because of the necessity of maintaining a parity for all roads in a given competitive territory, would return the more profitable roads an unreasonable earning, and, faced with the alternative providing rates which would only make a reasonable earning for the profitable roads and which would destroy the others, Congress determined that rates would be so adjusted as to permit the weaker roads to exist and to continue to function, but at the same time deprive the more profitable roads of the result of overplus earnings.

"It is obvious that this plan can not work out if each state or a given group insists upon a determination of its own as to what contribution should be made to the common group income.

"It must be realized that the Interstate Commerce Commission, a national body entitled to the respect and confidence of the country, acting under the mandate of Congress, has proceeded impartially, using the best available information and the best judgment of its members in the determination reflected in the order referred to. It has evidently in good faith sought to carry out the mandate of Congress.

"It is our deliberate judgment that it is the duty of this commission to co-operate in every reasonable way to give the Esch-Cummins act a fair trial and, rather than to attempt to impair the success of this legislation, to so act as to make it successful, not merely on the general proposition that all laws should have a fair test, but on the more definite situation that now confronts this country. We must all realize that transportation companies have resumed control of the various railroad properties under difficult circumstances, and, in view of the vital needs of this country for adequate transportation, it is the duty of all citizens and officials to further any movement looking to the bettering of the transportation business.

"We feel that, regardless of any opinion we might have as to the wisdom or unwisdom of the Esch-Cummins act, it is the foundation upon which the regulation of the railroads now rests and to shake that foundation would be against the public interest.

"We do not mean to say that this commission has abdicated its functions in rate fixing, as we believe that our determination to grant the prayer of applicants is sustainable upon the ground of reasonableness. Furthermore, we realize that we have a heavy responsibility in the matter of adjusting state rates which inevitably will become necessary upon the imposition of a percentage increase. The shippers who appeared before us in this proceeding have taken a very commendable position. Practically without exception they have stated their conviction that the railroads must have relief in increased rates in order adequately to give service. Furthermore, they believe this commission should co-operate with the Interstate Commerce Commission and make effective its order increasing rates. They do urge, however, that this commission keep control of the matter of adjustment of rates after the imposition of a percentage increase."

In the statement to the Interstate Commerce Commission the members of the California commission said:

"There are now pending before the Interstate Commerce Commission several cases involving the question of the power of your body to increase state rates where state commissions have failed or refused to place state rates on a parity with the increased rates authorized by your decision in Ex Parte 74.

"The California Railroad Commission has been requested by other states to join with them in a presentation to your Commission of its views and contentions relating to the questions involved.

"Time and distance did not permit of the receipt and study of the proposed presentation by other states and to permit of such discussion as would enable this commission to indicate in joint briefs its views, and to indicate such differentiation as it deemed appropriate from the views which might be entertained and presented by commissioners of states which did not authorize for state business, as did this commission, the rates fixed by the Interstate Commerce Commission.

"This commission in its opinion and order in Decision No. 7983, a copy of which is attached hereto, expressed its views as to the wisdom of the policy, if not, indeed, the practical necessity under existing conditions, of adopting the Interstate Commerce Commission rates for intrastate rates.

"If any doubt remains after reading the said decision of this commission as to its attitude concerning the state's authority over intrastate rates, we wish to briefly but most emphatically reaffirm our opinion that the powers of state authority over intrastate rates have not been nullified or reduced by the transportation act. We are now, without challenge, exercising full jurisdiction over state rates.

"However, to whatever extent the views of this commission may differ with the views of those state commissions which refused to adopt the increases granted by the Interstate Commerce Commission, we desire to emphasize complete agreement and accord with any and all state commissions in so far and to the extent that such commissions defend the legal right of state commissions to determine, fix and establish reasonable rates for intrastate business. To that extent it is this commission's desire to adopt and stand with all other state commissions entertaining similar views.

"The decision of this commission in this matter, as reference thereto will clearly indicate, was based upon the policy and practical needs of the situation rather than what it construed to be a mandate of the law."

The statement is signed by Edwin O. Edgerton, H. D. Loveland, Frank R. Devlin, H. W. Brundige and Irving Martin, commissioners.

### Rates in Arizona

John E. Benton, general solicitor of the National Association of Railway and Utilities Commissioners, issued a bulletin November 3, announcing that the Arizona commission had denied the carriers' application for increases on the ground that the railroads offered no proof in support of their application. The statement as to Arizona follows:

"I have today received from the Arizona Corporation Com-

mission a copy of its report and order upon carriers' application for intrastate rate advances in Arizona. This completes the record of decisions of the several state commissions upon such applications. From the report it appears that the carriers upon the hearing rested their case upon the presentation of the report and order of the Interstate Commerce Commission in Ex Pare 74. Counsel for the carriers was asked, 'You have no proof to present at all?' and the answer was, We have none.' Carriers objected to any consideration of particular rates. The Commission, however, heard evidence tending to show that the proposed flat percentage increase would in many instances produce unreasonable rates which would be destructive to traffic. The report reviews the pertinent constitutional and statutory provisions relating to the duty of the Arizona commission as to rate increases. The ruling and order of the commission is then announced, as follows:

"From the foregoing, it will be seen that this Commission has no alternative but to require a compliance with all constitutional and statutory laws relating to public service corporations and these laws definitely require that rates sought to be increased shall be justified at a public hearing. The Commission holds itself in readiness at all times to hear such applications, but in the absence of any showing, and particularly in cases where applicants decline to make any showing or present any evidence, there is but one course open to us and thta is to deny the application—which will be done in this instance, without prejudice, however, to a reopening of this case or to a new application for the purpose of making a showing as required by law. * * *

"It is ordered: That the application * * * be and the same is hereby denied."

### Rates in Iowa

Counsel for the carriers operating in the state of Iowa, in a brief replying to that filed by counsel for the state of Iowa, in the Iowa intrastate rate case, declare that the railroads have not acted prematurely in asking the Interstate Commerce Commission to remove discrimination against interstate commerce in that state instead of appealing first to the state legislature.

"It is contended in behalf of the state of Iowa and the Iowa Railroad Commission," counsel for the carriers say, "that the carriers should have waited until the convening of the legislature of Iowa in 1921, and until action should be taken by it to remove the discrimination in controversy before filing a complaint with this Commission, and that this Commission should take no action until after the legislature has declined to remove the discrimination.

"We think there is no provision in the law which will support such contention. It is a discrimination shown to exist by reason of regulations 'made or imposed by authority of any state,' which gives this Commission jurisdiction to act. The showing of an undue, unreasonable or unjust discrimination imposed by state authority gives the carriers the right to the remedy provided by the statute. They are not required to petition the legislature or state authorities for redress before making application to this Commission. The carriers did make application to the Board of Railroad Commissioners of Iowa in the belief that such commission had power to furnish the remedy. They were denied relief because the Iowa commission believed it had not the power to grant it. The carriers have long since adopted the practice of going to state commissions for relief the state commissions have power to grant, and have no desire to ignore state authorities, but relief from the legislature of Iowa is uncertain and, if granted, will be long delayed."

Discussing the question of what was the intent of Congress in passing the transportation act, counsel say:

"We have called attention to the necessity for reposing in the Interstate Commerce Commission the ultimate and final power and authority with reference to intrastate rates, if it is to furnish the carriers the return the law requires and not place the interstate rates upon a very much higher basis than state rates.

"In view of the well known disposition of state authorities to undertake to give shippers and travelers within the state lower rates than are enjoyed by shippers and travelers interstate—a disposition that was evidenced in the orders of many state commissions—Congress cannot, we think, be charged with either the stupidity or insincerity of imposing upon this Commission the duty to prescribe rates that will give the carriers a certain return, without giving the Commission, in the event state authorities follow their old practices, the right to place upon state commerce its share of the burden of furnishing such return.

"We may concede that Congress did not intend to take from the states the power to regulate intrastate commerce, in the first instance, and we have made no such contention, but we do believe Congress was sincere and earnest in its desire to prescribe regulations for interstate carriers that would result in the national welfare, and that it intended to and did make provision for any failure of the state to coöperate, and for any disposition of the states to give their own people lower rates at the expense of the nation as a whole. To contend otherwise is to charge Congress either with stupidity or insincerity."

In further support of their contention that Congress broadened the power of the Interstate Commerce Commission and intended that it should regulate the carriers from a broad, national point of view, counsel cite Section 210 of the transportation act, which makes provision for loans from the United States to carriers.

"This provision indicates the great national purpose for which the resources of the nation were made available," they say. "The government thus became not only interested in the carriers from the standpoint of the public needs of the nation as a whole for transportation, but also as a holder of their securities and as a holder of securities, in the contended solvency and the ability of the carriers ultimately to pay the sums borrowed. In adequate rates only could the hopes of the government in any of these respects be realized."

Reference is also made to sections 300 to 315—the labor sections of the act—with the comment that the Railroad Labor Board may prescribe the wages to be paid all employes of interstate carriers in all of their activities, whether engaged in interstate or intrastate commerce.

"These provisions illustrate in a measure the extent to which the control of interstate carriers is taken over by Congress and reposed in the Interstate Commerce Commission and other tribunals," it is contended. "Assuming such broad and comprehensive regulatory powers, Congress recognized its obligation and made provision for adequate rates and, in order that such provision might not be confined to prescribing rates for interstate commerce, provided, by amendments to Section 13, for placing upon intrastate commerce, by this Commission, of a part of the burden, in the event state authorities refused or failed to co-operate."

Counsel reason likewise in regard to the provisions of the act giving the Commission control over issues of securities and the construction or abandonment of railroads, as well as consolidation of railroads.

"With such extension of power in the Commission to deal with interstate carriers in the interest of the nation as a whole, it is unbelievable that Congress, in giving the Commission power to relieve interstate commerce from discriminations due to state rates, intended that the power should be limited to a narrower sphere than indicated by the language used, which is all embracing, and made so, we believe, on purpose to avoid the possibility of there being any discriminations, however caused, against interstate commerce, which were not by the provisions of the act made unlawful and required to be removed by this Commission," the carriers' brief says.

### Montana State Rates

Examiner G. H. Mattingly will hold a hearing at Helena, Mont., November 15, on the petition of railroads asking the Commission to order intrastate rates in that state to be increased in the same percentage amount as interstate rates were increased under Ex Parte 74. The proceeding is No. 11860, Montana Rates and Fares.

The Montana commission authorized the same percentage increase on intrastate freight traffic as granted on interstate traffic by the Interstate Commerce Commission, but denied increase in passenger fares on statutory grounds, and denied increases in Pullman fares, excess baggage rates and milk and cream rates.

### New York Passenger Fares

On a showing that the carrier needed the additional revenue, the Public Service Commission for the second, or "upstate," district of New York has authorized the Ulster & Delaware to charge an intrastate passenger fare of five cents a mile. Allowance of five cents a mile on interstate fares was authorozed by the Interstate Commerce Commission some time ago.

In this case the carrier did what counsel for the New York commission complained that the New York Central did not do when that carrier asked the New York body to authorize intrastate fares of 3.6 cents per mile, as the Interstate Commerce Commission had done for interstate fares. At the hearing on the application of the New York Central and other carriers to have the Interstate Commerce Commission set aside the three cent fare rule now in effect in New York on state business on the ground of discrimination against interstate commerce, the New York commission contended that it could not make a change in the fares except upon a showing that the three cent fare was insufficient. In effect, the New York Central contended that it had made such a presentation by introducing the testimony taken by the Interstate Commerce Commission showing the needs of the railroads for additional revenue.

The Ulster & Delaware appeared before the New York body and made a showing as to its needs. It took the financial condition of the railroad in 1914 and had the testimony submitted then by William J. Wilgus, an engineer, brought down, in its essentials to 1920. Mr. Wilgus showed that even the 40 per cent increase in freight rates allowed by the New York commission and the proposed five cents per mile fare would give the company revenue enough to yield a return of only 3.1 per cent on the investment, 1.9 on passenger business and 3.8 per cent on freight.

Disagreeing with the base figures only to the extent that the company had not made proper allowance of the $1,250,000 awarded the company as damages to its property on account of changes made in its line by New York state in its operations to procure a proper water supply for New York city, the

up-state commission said that the company had made a showing of necessity for the five cent per mile fare.

Adjusting the figures so as to take care of that allowance, the New York body came to the conclusion that the net income of the company on the already increased 40 per cent increase in freight rates and five cents a mile on passengers would amount to $253,474. The Wilgus estimate was $249,512, or within less than $4,000 of the estimate made by the state commission.

The New York commission, commenting on the revised Wilgus figures, said they are better than those of 1914 because cash amounting to $1,250,000 has been substituted for property of a theoretical value of that amount, without impairing the earning power of the company. The capitalization, for road and equipment, the New York commission's report says, is something less than $36,000 a mile for road and equipment.

"Upon this showing the application would seem to be meritorious and should be granted unless we can foresee an early and radical change in economical conditions which will substantially increase the gross income," says the New York commission's report. "Indications are that the mounting costs of operation have now seen their apex and have started on a steady decline, but in view of the moderate return which apparently will be available even with a considerable improvement in conditions, we can see no ground upon which the relief prayed for can be properly withheld."

The order grants the higher fares for one year and thereafter until the further order of the commission. The tariffs may be filed on three days notice.

The Ulster & Delaware made its showing without reference to the action of the federal body and without claiming anything other than that the return would be inadequate unless and until the state authorized a five cent fare, which was the same as that authorized by the federal body, on a similar showing as to necessities which could be met, in part, by an increase in interstate fares. The New York commission was asked to grant the higher intrastate fares on the ground set forth by the New York statute, and not on the ground upon which the federal body can order the removal of discrimination under the principles laid down in the Shreveport case.

#### Testimony as to Reasonableness

Commissioner Woolley, before departing for Florida to hear testimony beginning November 8 in the Florida intrastate rate case, notified the railroads and the state commission that he would hear testimony as to the reasonableness of the rates involved. This constitutes a departure from the former policy followed by the Commission in hearing testimony in the interstate cases, the question of reasonableness of rates having not entered into these cases heretofore.

It is understood that the action of Commissioner Woolley was not an expression of the attitude of the Commission on the question involved, but that he believed that the situation in the Florida case is such that testimony as to reasonableness should be heard.

The carriers have contended in all of the intrastate cases that the reasonableness of the rates was not involved—that after the percentage increases granted by the I. C. C. have been applied to intrastate traffic, the question of reasonableness could then be taken up by the state commissions. It is also understood that the majority of the members of the Commission hold that the Commission has no jurisdiction over the question of the reasonableness of intrastate rates—that their power goes only to the question of unjust discrimination.

If the Commission should go into the matter of reasonableness of the intrastate rates, it is conceded that every intrastate rate case resulting from the petitions of carriers asking the removal of discrimination against interstate commerce would be materially lengthened.

## FOURTH SECTION DATES POSTPONED

*The Traffic World Washington Bureau*

In supplemental general fourth section orders Nos. 18, 19, 20, and supplemental fourth section order No. 7642, the Commission, November 1, postponed the dates when tariffs issued under Ex Parte 74 must be brought into conformity with the fourth section of the interstate commerce act. Correction of the tariffs has been postponed until March 1, as to freight, and until March 1, June 1, and October 1, 1921, as to various classes of passenger fares and charges. In granting this postponement the Commission said it took this opportunity to announce to the carriers that it regards the corrections of fourth section departures protected by various relief orders, heretofore issued by the Commission, as a matter of the utmost importance to which it expects the carriers to give primary consideration.

In the same announcement to the public, the Commission directed attention to special permission No. 50340, which contains an order requiring that not less than sixteen and two-thirds per cent of the number of pages contained in all tariffs supplemented under authority of this special permission shall be reissued within three months from September 1, and that not less than the same number of pages of the tariffs shall be reissued each three months thereafter until all the schedules so supplemented shall have been reissued.

"It is not the intention of the Commission," says an announcement given to the public on November 1, "either to modify the terms of this order or to make any extension of the periods of time named therein. It is convinced that the requirements of the order are reasonable and will insist upon compliance with its terms." The announcement is as follows:

"The rates, fares and charges established during the period of federal control under General Order No. 28 of the Director-General, United States Railroad Administration, increased existing and in some instances created new departures from the provisions of the fourth section of the act to regulate commerce, as amended. Other changes made by the Director-General in rates, fares and charges subsequently to the increases made under General Order No. 28 also increased or created departures from the fourth section.

"Upon the return of the transportation systems to their corporate owners on March 1, last, fourth section orders Nos. 7600 and 7601 were issued by the Commission, authorizing the continuance of these departures until September 1, 1920, and where applications to continue such departures were filed with this Commission on or before June 30, 1920, until such applications were passed upon.

"Subsequently, on petition of the carriers, these dates were postponed to January 1, 1921, and October 31, 1920, respectively.

"The percentage increases in rates, fares and charges approved by the Commission in Ex Parte 74 also resulted in many increased discriminations and new departures from the provisions of the fourth section and carriers were authorized, by fourth section order No. 7700, to continue such departures until November 1, 1920, and where applications for relief to continue such departures were filed with the Commission on or before that date, until such applications were passed on.

"Petitions having been received from carriers throughout the United States showing that further time is necessary to correct the departures authorized by these orders or to file applications covering such of them as the carriers may desire to continue, the Commission has by orders issued this day postponed the dates of each of the above mentioned orders for the final correction of the departures covered thereby or the filing of appropriate fourth section applications to cover the said departures, until March 1, 1921, as to rates and charges for the transportation of freight, and until March 1, June 1 and October 1, 1921, as to various classes of passenger fares and charges.

"In granting this postponement, the Commission takes this opportunity to announce to the carriers that it regards the correction of the fourth section departures protected by these orders as a matter of the utmost importance, to which it is expected primary consideration will be given.

"Upon the date to which the orders have now been postponed the transportation systems of this country will have been in the possession of their corporate owners a year, and more than 7 months will have elapsed since the Commission's report in Ex Parte 74 was issued. It is its view, therefore, that the carriers should be able if their efforts are properly directed to that end, either to remove the departures protected by these orders or to file appropriate applications as provided therein within the additional time allowed. Announcement is hereby made that the carriers will be expected to comply with the requirements of these orders, as amended, within the time specified therein and the Commission deems it proper to state that it will not look with favor upon any requests for the further postponement of the effective dates of the said orders.

"Attention is also directed to Special Permission No. 50340, which authorized the Special Supplement issued by carriers making effective the percentage increases authorized in our opinion in Ex Parte No. 74. The Special Permission contains an order requiring that not less than sixteen and two-thirds (16 2-3) per cent of the number of pages contained in all tariffs supplemented under authority of the Special Permission shall be reissued within three months from September 1, 1920 and that not less than the same number of pages of said tariffs shall be issued each three (3) months thereafter until all schedules so supplemented shall have been reissued.

"It is not the intention of the Commission either to modify the terms of this order or to make any extension of the periods of time named therein. It is convinced that the requirements of the order are reasonable and will insist upon compliance with its terms."

## APPLICATION OF RATE ADVANCES

*The Traffic World Washington Bureau*

Questions as to the rates to publish in the application of the Commission's permissive order in the 1920 advanced rate case, Ex Parte No. 74, are being raised in various parts of the country through the filing of tariffs by railroads, to take the place of the blanket supplements authorized by the Commission's decision in that case.

The Commission has made no decisions with regard to conflicts of opinion between shippers and railroads as to whether

points near the line are in one territory or in another, although reports to the contrary have been put into circulation, especially as to the El Paso & Southwestern. According to one report the Commission has ordered the El Paso & Southwestern to file rates from Gardiner, Koehler and Bear Canyon, N. M., on the basis of the 35 per cent increase allowed in Western Classification territory instead of 25 per cent, the basis allowed in the Mountain-Pacific territory, as a substitute for rates based on a 25 per cent increase.

No such order has been issued by the Commission. The El Paso & Southwestern originally applied 25 per cent increases from those points and they are in effect. Early in October that carrier filed its I. C. C. 1167, putting the rates on the basis of a 35 per cent increase, effective November 6. Protests were made against that tariff, and at the time this was written the question of suspending that tariff was under consideration by the Commission.

The Santa Fe, in its original publication under Ex Parte No. 74, put the points mentioned into 35 per cent territory. The El Paso road also put Dawson, N. M., into 25 per cent territory.

This change of view on the part of the El Paso & Southwestern was the result of its own thoughts on the subject, so far as the Commission knows. It is certain that no order went out from the Commission requiring it to make the change. Other railroads having branch lines that cross and re-cross the boundary lines have filed tariffs, which, it is believed, raise the same question of interpretation.

# EX PARTE 74 PETITION DENIED

*The Traffic World Washington Bureau*

The Commission has denied a petition filed by the Kansas Court of Industrial Relations, asking for a rehearing in Ex Parte 74, in so far as the decision relates to the carriers in the Western group. The petition was based on the Kansas court's allegations of error in the amount the Commission estimated the railroads should earn in that territory under the new rates. (See Traffic World, Oct. 23, p. 753.) The Commission gave no reason for denial of the petition for rehearing. The effect of the denial is that the Commission will stand on its findings in Ex Parte 74, without giving any explanation or other answer to the allegations made by the Kansas court. In its petition asking for rehearing, the Kansas court said in part:

"That under the decision of the Interstate Commerce Commission the carriers in the Western group would earn an amount, to wit, $192,853,686, in excess of the statutory fair return, viz., 6 per cent, on the aggregate value of the property devoted to common carrier purposes authorized by Section 15 (a) of the Interstate Commerce Act.

"That the carriers in the Western group in their supplemental application for increases in interstate rates submitted an estimate based on the wage award of July, 1920, of $237,-281,659, and that said estimate is excessive, based on the latest available data filed with the Interstate Commerce Commission showing an estimated increase in wage accruals so far reported and charged into the July, 1920, expenses for the Western district of $9,079,784, which equated for a twelve months' period would amount to $108,957,408, or approximately forty-six per cent of the original estimate, and $125,842,592 less than the amount the Interstate Commerce Commission used in arriving at its decision, viz., $234,800,000.

"Wherefore, Petitioner prays that a re-hearing be granted in the above entitled case in so far as the decision and order of the Interstate Commerce Commission relates to the Western group; and that the Interstate Commerce Commission enter such further order, or orders, in the premises as to it may seem reasonable and just."

It is not expected, however, that the denial of the Kansas court's petition will be the end of the allegations put forth by that body. The Kansas court, it is understood, will make its allegations an issue in the Kansas intrastate rate case, which is now before the Commission, as the result of the carriers' petition asking removal of discrimination against interstate commerce alleged to result from the order of the Kansas court authorizing increases in intrastate rates less than those authorized for interstate rates in the same territory by the I. C. C.

# MORE TRANSPORTATION

(Bulletin No. 4, issued under authority of the Association of Railway Executives, for the information of officials of railroads and others to unify all forces in the effort to secure maximum service from existing transportation facilities.)

"An Early and Substantial Reduction in the Number of Locomotive Now Unfit for Service."

Previous bulletins have dealt with the first three aims, recommended by the Advisory Committee of the Association of Railway Executives, to increase the amount of service from existing facilities:

1. An average daily minimum movement of freight cars of not less than 30 miles per day;
2. An average loading of 30 tons per car;
3. Reduction of bad-order cars to a maximum of 4 per cent.

An immediate reduction in the number of locomotives now unfit for service is obviously an essential part of the More-Transportation program. Heavier loading may be achieved, car movement may be increased, but adequate means to haul the traffic is indispensable.

On September 15, of all locomotives, 17.1 per cent were out of service for repairs requiring over 24 hours, and 6.4 per cent for repairs requiring less than 24 hours.

As a basis for comparison (although the statistics were kept on a different basis at that time), in September, 1917, 13.5 per cent of freight locomotives were in shops for repairs, or awaiting repairs.

It must be agreed that the number of locomotives out of service for repairs is too many.

It is too many even if there were in service all the locomotives needed.

But since there is a shortage of locomotives it is all the more necessary that the last ounce of effort should be exhausted to reduce the percentage of locomotives out of service.

### Not Enough Locomotives

The average number of locomotives acquired yearly by Class I roads in the four years ending June 30, 1916, was 2,554, and the average number retired 2,071, showing an average annual increase in the number in service of 483.

In 1917 and 1918, the locomotives acquired totaled 4,951. In the same years 2,400 locomotives were retired.

This shows an increase in the number of locomotives in service of 1,275 a year, but this apparent increase was due to reduction in the rate of retirement.

In 1919, the three largest locomotive-building companies constructed only 946 locomotives for standard-gauge steam roads in the United States. This compares with an average of 2,008 locomotives built annually by these companies for U. S. roads during the preceding eleven years. The companies in question supply three-quarters of all locomotives used by Class I roads.

According to figures compiled by the Railway Age, the average number of locomotives provided annually by the railroads for eight years prior to the war was 2,970. The same authority estimates that the accumulated shortage of the years 1917, 1918 and 1919 was 3,190 locomotives.

### More Than $100,000,000 for New Motive Power

According to reports to the Interstate Commerce Commission, unofficially summarized on August 30, the railroads plan the purchase of 1,800 locomotives this year at a cost of more than $105,000,000.

In the program for utilization of the $300,000,000 revolving loan fund provided for in the Transportation Act, there are loans to some thirty-two companies amounting to $29,000,000 to enable them to acquire 636 freight locomotives and 277 switching locomotives, having a total value of approximately $58,000,000.

Even if this is a maximum possible program for increase of motive power at this time, pending the availability of new locomotives, more service must be obtained from the locomotives we have. To this end is pledged the effort of every railroad management.

### Progress

Since the program of the Advisory Committee of the Association of Railway Exectuives was announced, striking progress has been made by a large number of roads toward increasing the daily movement of cars, increasing freight car loading and reducing the number of bad order cars. In this effort they have had and thankfully acknowledge the co-operation of shippers and the general public.

Average daily movement of freight cars has been increased from 22.3 miles in February to 26.1 miles in July, and incomplete statistics for August indicate a still further improvement.

Average loading per freight car has also been largely increased. The average for all roads for July was 29.6 tons, but for later months the average is not yet available.

With respect to car repairs, the utmost efforts have been made. Improvement in this respect will be accelerated by the efforts to increase the number of cars on owner roads.

For the week ending October 9, American railroads handled 1,009,787 cars as compared with 982,171 in the corresponding week of 1919 and 959,722 in the corresponding week of 1918. This is the first time that car loading has exceeded the million-car mark this year.

# REOPENING OF NATCHEZ CASE

The order of the Commission, opening No. 8845, Natchez Chamber of Commerce vs. Louisiana & Arkansas et al., issued on October 29 (see Tariff World, October 30, p. 803), is as follows:

Upon further consideration of the record in the above entitled proceeding and of the petition for rehearing of interveners:

It is ordered, That this proceeding be, and the same is hereby reopened for further hearing of so much thereof as relates to rates on the following commodities: brick, fruits, melons and vegetables, grain, grain products and flour; hay and straw, junk and scrap iron; "good roads" sand and gravel for the United States, state and municipal governments.

It is further ordered, That said proceeding be, and the same is hereby, reopened for further hearing relative to combination rates on east bank Mississippi River crossings which are lower than the rates prescribed in our order entered herein under date of August 12, 1920, and as to the granting of fourth section relief relative thereto.

It is further ordered, That said proceeding be, and the same is hereby reopened for further hearing relative to rates between Vicksburg, Miss., and points in western Louisiana.

It is further ordered, That petition of interveners for rehearing of all other portions of said proceeding be, and it is hereby denied.

Pending such rehearing and decision thereon the order entered herein on August 12, 1920, as amended on October 4, 1920, shall remain in full force and effect.

# RAILWAY REVENUE

*The Traffic World Washington Bureau*

A final summary of revenues and expenses of Class I roads for August and for the eight months ended with August, was made public by the Commission November 3. It covers 187 Class I roads and 15 switching and terminal companies, operating 235,547 miles of line.

For the country as a whole, the revenue increased from $471,714,375 in August, 1919, to $554,785,872 in August, 1920; expenses increased from $359,149,584 to $678,728,662, and the net operating income fell from $92,508,715 to a deficit of $155,227,617. The operating ratio went up from 76.14 to 122.34.

In the eastern district, the revenue increased from $218,383,515 to $252,676,202; expenses from $168,874,689 to $317,641,692. The net operating income fell from $40,845,268 to a deficit of $78,698,433 and the operating ratio rose from 77.33 to 125.71.

In the Pocahontas district, the revenue increased from $14,846,741 to $17,664,564; expenses from $11,019,792 to $19,437,088, and net operating income fell from $3,292,512 to a deficit of $1,949,452, while the operating ratio increased from 74.22 to 110.03.

In the southern district, the revenue increased from $53,519,682 to $65,802,932; expenses from $43,977,500 to $75,439,142; and the net operating income fell from $7,268,951 to a deficit of $12,023,682. The operating ratio rose from 82.18 to 114.64.

In the western district, the revenue increased from $184,970,437 to $218,642,174; expenses from $135,277,603 to $266,210,760; and the net operating income declined from $41,101,984 to a deficit of $62,556,050, while the operating ratio rose from 73.13 to 121.76.

In the eight-months period for the country as a whole the operating revenue rose from $3,283,165,723 to $3,822,828,663; expenses from $2,808,182,092 to $3,763,577,847, and the net fell from $326,452,071 to a deficit of $154,810,774. The operating ratio went up from 85.53 to 98.45.

In the eastern district, the revenue rose from $1,476,563,964 to $1,674,225,342; expenses from $1,298,556,717 to $1,760,903,212, and net fell from $113,595,331 to a deficit of $176,882,847, while the operating ratio increased from 87.94 to 105.18.

In the Pocahontas district, the revenue increased from $111,669,868 to $124,448,935; expenses from $87,704,045 to $116,888,631, and the net fell from $19,168,570 to $6,574,773. The ratio went up from 78.54 to 93.92.

In the southern district, the revenue increased from $405,449,343 to $493,810,293; expenses from $358,242,887 to $470,664,328; and the net declined from $30,492,788 to $2,182,293. The operating ratio rose fom 88.36 to 95.31.

In the western district, the revenue increased from $1,289,482,548 to $1,530,344,093; expenses from $1,053,678,443 to $1,415,121,676, and the net fell from $163,195,382 to $13,315,007. The operating ratio increased from 52.49 to 92.47.

In the six months of private control during which the government guaranteed to the railroads an income equal to the standard return, the government lost $656,769,678, according to computations made from the figures contained in the Commission's summary of the results of the operation of Class 1 roads in August and for the eight months ended with August.

In the eight months' period, which includes two months of federal control, the loss to the government was $754,810,774. In the first two months of 1920, during which time the roads were under control, they had a net of $51,958,904. The standard return figure for two months is $150,000,000.

All these figures as to losses are based on the assumption that the standard return, which was the measure of the guaranty to the railroads during the guaranty period, amounts to $75,000,000 a month, or $600,000,000 for the eight months. In the eight months' period the railroads had a total deficit of $154,810,774. Adding that deficit to the amount which the government had agreed to pay to the railroads as compensation brings the obligation of the government to the total of $754,810,774.

In the two first months of the year, during which the railroads were under federal control, the margin between what the railroads earned and what the government was obligated to pay them amounted to $98,041,096. The government is under obligation to pay the railroads $150,000,000 for those two months. They earned for the government $51,958,904, so the margin between the promised rent and the earnings for that two months' period were $98,041,096. By subtracting that sum from the total of the margin between what the railroads earned for the government and what it promised to pay them, the margin, or deficit for the first six months of private control, commonly known as the guaranty period, is shown to be $656,769,678.

A large part of that margin was caused by the inclusion in the July and August accounts of the back pay, amounting to $626,000,000, awarded by the Railroad Labor Board. The amount so included is about $144,000,000.

Unofficial figures compiled by the Bureau of Railway Economics from reports of 160 Class 1 roads operating a mileage of 171,000 miles show that for the month of September the increase in gross revenue for the country as a whole was approximately 25 per cent over September, 1919. The increase in operating expenses was between 28 and 29 per cent and the increase in net operating income was 4.1 per cent.

All Class 1 roads in September, 1919, earned a net operating income of $77,763,000. Applying an increase of 4.1 per cent would bring the net for September this year to approximately $80,000,000. All Class 1 roads should earn about $109,000,000 in September to make up a 6 per cent net return for the entire year, based on the percentage which September normally bears to the full year—about 10 per cent.

The average increase in freight rates authorized by the Commission in Ex Parte 74 is roughly estimated at 35 per cent for the country as a whole, and the passenger fare increase was 20 per cent. These percentages are comparable with the 25 per cent increase in gross revenue referred to above. In order words, the reports of earnings from 160 Class 1 roads indicate that they earned considerably less in September than was contemplated by the Commission in its decision in Ex Parte 74.

In the Eastern district the increase in gross revenues for September over the same month of 1919 was approximately 30.4 per cent, while the Commission authorized an increase in freight rates of 40 per cent and passenger rates 20 per cent in that territory. Operating expenses increased approximately 34 per cent and the net operating income 2.45 per cent.

In the Southern district the increase in gross revenue amounted to approximately 24.45 per cent over September, 1919, while the Commission authorized an increase of 25 per cent in freight rates and 20 per cent in passenger fares in that territory. The increase in operating expenses was 22.77 per cent, and the increase in net operating income was approximately 77 per cent.

In the Western territory the increase in gross revenue was about 18 per cent, while the Commission authorized freight rate increases of 35 per cent and 25 per cent in the two divisions of that territory and 20 per cent in passenger fares. The increase in operating expenses was approximately 24 per cent and there was a net decrease in operating income of 7.75 per cent.

The failure of the roads—if the same ratio is maintained when all the roads have reported (there being 27 roads yet to report)—to earn what the Commission estimated they should earn under the new rates is attributed in part to the fact that a considerable volume of traffic moved in the early part of September under the old rates. Another factor entering into the matter was the back pay credited to September accounts.

None of those who know much about the factors entering into the matter attaches much importance to the showing. As has been said, much of the business that moved in September moved on the rates in effect in August. All the long-haul traffic —say from the Mississippi and west to the coast to New York and New England and delivered in the first two and possibly three weeks of September—was delivered to the railroads prior to August 26, the day the higher rates went into effect. Much of the shorter-haul business also moved on the lower rates because shippers naturally made great efforts to get their goods into the hands of the carriers prior to the increase. Cars were loaded prior to August 26 and perhaps not taken from the sidetracks for a week.

All that volume of traffic moved on rates that were put into effect on June 25, 1918. Those rates are the ones that Director General McAdoo estimated, some time prior to May 21, 1918, would be sufficient to cover the increases in wages and the cost of material that took place after January 1, 1918, the day he took charge of the railroads.

Traffic moving up to August 26, 1920, was moving on the McAdoo judgment reached some time prior to May 21, as to what was needed to cover the wage increase he had made retroactive to January 1, 1918, the increases in the cost of materials and materials that were being made nearly every day during the continuance of active hostilities, and the sharp jumps in prices that took place in 1919, after the war restrictions were taken off. They were supposed to be sufficient to cover the Hines decision, in December, 1919, that the country could afford to pay the trainmen time and a half time for overtime and the multitude of "readjustments" made by the Director General after May 21, 1918.

That day, May 21, 1918, is the day on which General Order No. 28 was given to the public. From that time forward the Railroad Administration made many increases in rates and many reductions, but neither Director General McAdoo nor Director General Hines made any general advance in rates to cover increases in operating costs caused by their labor "readjustments" or the increases in the cost of supplies and materials which, in some instances, were caused by the increase in railroad rates decreed by General Order No. 28.

Director General McAdoo, when he made his 25 per cent increase, permitted his publicity men to suggest to the public that the new rates would yield a surplus. Instead, the year's operations resulted in a difference of $236,000,000 between the net earned by the McAdoo operation of the railroads and what the government had promised to pay for the privilege of operating the railroads, commonly called the deficit. It was a deficit

so far as McAdoo operation was concerned, but not an actual operating deficit.

The effect of the allowance of time and a half for overtime caused a sharp bulge in the cost per freight train mile in the latter half of 1919, attributable to enginemen and trainmen. From July 1, 1919, to July 1, 1920, the increase for enginemen was from 22.6 to 28.1 and the increase of the cost of trainmen was from 26.1 to 31.6 cents per freight train mile.

The Commission's recent report on that subject said "the explanation is not available." The increase in cost of enginemen from January to July of this year, however, was only seven-tenths of one cent and the increase in the cost of trainmen was only one cent.

In other words, 70 or 80 per cent of the unexplained increase in cost took place in the period from July 1, 1919, to December 31, 1919. The allowance of time and a half for overtime was made December 15, 1919, retroactive to December 1.

While the Commission said the explanation was not available, the fact that the allowance of time and a half for overtime was made in December, 1919, has not been forgotten by those who have considered the figures made during government and private operation. The figures of the Commission are being checked with a view to ascertaining whether the contrast between November, 1919, and January, 1920, affords ground for believing that that allowance caused the unexplained increase in the freight train mile factor of operating expenses caused by the enginemen and trainmen. It is not probable, however, that the Commission will have anything more to add to its declaration that the explanation was not available when the summary of freight statistics for July and for the seven months ended with July was made public, October 22.

Statisticians believe that October reports will give a more reliable index to the probabilities of what will be the outcome of the increased rates made operative August 26. But it is believed the recession in business caused by the uncertainty about prices in the lighter manufactures will have a considerable influence on the monetary outcome in that month. There is not likely to be any recession in tonnage for several weeks, even if the slump in the production of freight does affect the revenues adversely. There is much heavy tonnage to be moved. The grain and cotton crops are still in the country; pulp wood needs moving and so do phosphate rock and the manufactured fertilizer, so that heavy traffic may be expected to continue for several weeks. New England witnessed that recession in business in time for the effects to show in the October reports of revenue, even if not in the weight of traffic moved, because all-rail coal took the place of the merchandise that was not manufactured in that part of the country.

While there is no politics in railroading—at least there is supposed not to be—railroad executives recognize the fact that business hesitates while the quadriennial inquest into the affairs of the country is being held, and that, usually, there is a revival immediately after the ballots have been counted, without regard to what they show. Therefore, the impression is general that, while there may be disappointment in October, November will show up in the returns as having done its share toward providing the $1,134,000,000 net income to yield the carriers 6 per cent on the value of their property devoted to transportation service.

There is an inclination to be a bit acid about the failure of the Director General to increase rates while the tendency of commodity prices was upward in the fall of 1919 and the two months of this year during which federal control continued. His failure to make advances then, it is pointed out, puts the onus, among the unthinking, on the railroads and the Commission. They had to make advances to cover expenses in the creation of which they had neither part nor supervision. McAdoo was advised, in the spring of 1918, before he made his 25 per cent advance, that it would be wise for him to make rates high enough to produce, in theory, at least $200,000,000 more than he needed. He declined to follow that advice, with the result that, instead of having a surplus, his year of operation caused him to fall $236,000,000 behind what the government had agreed to pay as rent.

## REVENUE TRAFFIC SUMMARY

*The Traffic World Washington Bureau*

A revenue traffic summary compiled by the bureau of statistics of the Commission from reports of the large steam roads for July and for the seven months ending with July was made public by the Commission November 2.

The summary covers a mileage of 234,089 miles. The revenue tons carried in July increased from 184,525,127 in 1919 to 203,918,088 this year. The revenue tons carried 1 mile increased from 32,048,695,000 to 36,941,917,000. Freight revenue rose from $304,857,652 to $353,024,878 in July this year. The average miles per revenue ton per railroad increased from 173.68 to 181.16 and the revenue per ton mile increased from .951 to .956.

For the seven months ending with July the revenue tons increased from 1,097,333,022 in the first seven months of 1919 to 1,237,106,785 in the same period of 1920. The revenue tons carried one mile increased from 196,508,911,000 to 227,218,148,000 in the first seven months of 1919. Freight revenue increased from $1,905,620,938 to $2,197,556,151. The average miles per revenue ton per railroad increased from 179.08 to 183.67. The revenue per ton mile, however, declined from .970 to .967.

In the matter of passenger traffic the revenue passengers carried in July increased from 107,761,662 in 1919 to 114,487,518 in 1920. The revenue passengers carried one mile increased from 4,528,608,000 to 4,785,323,000 in July, 1920. The revenue passenger car miles, including mixed and special service, increased from 316,076,036 to 326,135,263, and the passenger revenue increased from $112,952,739 to $122,494,806. The average miles per revenue passenger per railroad decreased from 42.02 to 41.8 and the revenue per passenger per railroad increased from $1.048 to $1.070. The revenue passenger mile increased from $2.494 to $2.56.

In the seven-months period the number of revenue passengers carried increased from 666,385,872 in 1919 to 717,783,896, and the revenue passengers carried one mile went up from 25,856,902,000 to 26,307,520,000 in 1920. The revenue passenger car miles, including mixed and special service, showed an increase from 1,969,324,374 to 2,059,837,935. The passenger revenue rose from $652,828,906 to $686,513,103, and the average miles per revenue passenger per railroad decreased from 38.8 to 36.65. The revenue per passenger per railroad fell from 98 cents to 95.6 cents, and the revenue per revenue passenger mile increased from $2.525 to $2.610.

## REVENUE FREIGHT LOADING

In the week ending October 16, the number of cars of revenue freight loaded by the railroads fell slightly behind that of the preceding week, but was still above the million mark. The total number of cars was 1,005,663, as compared with 1,009,787 in the week ending October 9, according to the weekly report of the car service division of the American Railway Association issued October 30.

The loading of grain and grain products was 3,039 cars less for the country as a whole in the week ending October 16, as compared with the corresponding week in 1919. There was also a decrease in live stock loading, 7,425 fewer cars being loaded this year as compared with 1919. Coal loading showed an increase of 10,226 cars; coke, an increase of 5,704 cars; forest products, an increase of 1,612 cars; ore, an increase of 23,200 cars; merchandise, L. C. L., an increase of 56,182 cars, and miscellaneous, a decrease of 52,875 cars.

The total number of cars loaded in the week ending October 16 in 1919 was 972,078 and 927,134 in 1918.

The number of cars of revenue freight loaded in each district, by commodities, in the week ending October 16 and the corresponding week of 1919, was as follows:

Eastern district: Grain and grain products, 6,456 and 6,756; live stock, 3,205 and 3,672; coal, 58,067 and 58,641; coke, 3,751 and 3,006; forest products, 8,553 and 8,105; ore, 10,609 and 6,095; merchandise, L. C. L., 47,431 and 25,651; miscellaneous, 99,379 and 121,795; total, 1920, 237,451; 1919, 233,721; 1918, 225,936.

Allegheny district: Grain and grain products, 2,472 and 3,083; live stock, 3,512 and 3,640; coal, 70,670 and 65,691; coke, 5,694 and 3,224; forest products, 4,066 and 4,458; ore, 14,323 and 8,989; merchandise, L. C. L., 37,828 and 41,015; miscellaneous, 75,924 and 71,431; total, 1920, 214,489; 1919, 201,531; 1918, 206,270.

Pocahontas district: Grain and grain products, 81 and 176; live stock, 471 and 446; coal, 23,834 and 22,786; coke, 772 and 604; forest products, 1,839 and 2,070; ore, 336 and 264; merchandise, L. C. L., 2,646 and 129; miscellaneous, 7,625 and 9,709; total, 1920, 37,604; 1919, 36,184; 1918, 35,363.

Southern district: Grain and grain products, 3,063 and 3,093; live stock, 2,715 and 3,169; coal, 29,059 and 26,557; coke, 1,570 and 319; forest products, 19,756 and 18,637; ore, 3,315 and 4,147; merchandise, L. C. L., 38,707 and 20,629; miscellaneous, 37,889 and 56,402; total, 1920, 136,074; 1919, 132,953; 1918, 115,648.

Northwestern district: Grain and grain products, 14,020 and 14,407; live stock, 9,701 and 11,474; coal, 11,568 and 14,155; coke, 1,732 and 745; forest products, 15,368 and 15,946; ore, 44,563 and 31,211; merchandise, L. C. L., 29,140 and 23,400! miscellaneous, 40,843 and 50,387; total, 1920, 166,935; 1919, 161,725; 1918, 159,951.

Central Western district: Grain and grain products, 10,202 and 11,275; live stock, 12,926 and 16,910; coal, 27,458 and 23,021; coke, 468 and 386; forest products, 5,945 and 5,729; ore, 3,017 and 2,372; merchandise, L. C. L., 30,914 and 24,279; miscellaneous, 51,392 and 58,468; total, 1920, 142,322; 1919, 142,440; 1918, 127,878.

Southwestern district: Grain and grain products, 3,689 and 4,227; live stock, 2,685 and 3,509; coal, 6,986 and 6,565; coke, 152 and 151; forest products, 7,146 and 6,116; ore, 371 and 256; merchandise, L. C. L., 17,795 and 13,176; miscellaneous, 31,789 and 29,524; total, 1920, 70,788; 1919, 63,524; 1918, 56,088.

Total loading by commodities on all roads: Grain and grain products, 39,978 and 43,017; live stock, 35,395 and 42,820; coal, 227,642 and 217,416; coke, 14,139 and 8,435; forest products, 62,673 and 61,061; ore, 76,534 and 53,334; merchandise, L. C. L., 204,461 and 148,279; miscellaneous, 344,841 and 397,716.

L. C. L. merchandise figures for 1920 and 1919 are not comparable, as some roads are not able to separate their L. C. L. freight and miscellaneous of 1919. Add merchandise and miscellaneous figures to get a fair comparison.

# Tentative Reports of the Commission

## SWITCHING AND SPOTTING ALLOWANCE

Attorney-Examiner Charles F. Gerry, in a tentative report on No. 11598, Jackson Iron & Steel Company vs. Detroit, Toledo & Ironton et al., recommended a holding that the non-allowance of reasonable compensation for the switching and spotting performed by the complainant at its blast furnace at Jackson, O., within the plant area, had not been shown to have been or to be unduly prejudicial. Therefore, his idea is that the complaint should be dismissed.

Years ago the Detroit, Toledo & Ironton made an allowance of 85 cents a car. In 1911 the B. & O. agreed to pay a similar allowance, but it never did. In 1914 the allowance was cut off. For a short period the carriers performed the switching and spotting and then the company took over that work because, as Gerry indicates, it thought the service would not be continuous enough to keep the blast furnace in operation. The carriers offered to perform the work if the Commission said it was part of their duty, but Gerry thinks it should hold that it is not the carriers' duty to do any work in the plant area, because that would not be for the interest of the general public, such as it would be if the blast furnace took delivery on a public team track owned and controlled by the carriers.

## ENTITLED TO DIVISIONS

Attorney-Examiner William A. Disque, in a tentative report on No. 11367, Benwood & Wheeling Connecting Company vs. Pittsburgh, Cincinnati & St. Louis et al., recommends that the Commission hold the complainant to be a common carrier and as such entitled to reasonable divisions out of joint through rates or absorption of switching charges, under appropriate tariff provisions. The company is owned and officered by stockholders of the National Tube Company and performs a terminal service for the proprietary company and other shippers in the Benwood-Wheeling iron and steel district, owning and operating nine locomotives on 6.95 miles of standard track. Part of the track is owned by the Baltimore & Ohio. Disque said that the record as made did not show what would be reasonable divisions or absorptions for the company.

## RATE ON ASPHALTUM

A holding of unreasonableness and an award of reparation have been recommended by Examiner John A. McQuillan in a proposed report on No. 11594, National Asbestos Manufacturing Company vs. Central Railroad Company of New Jersey et al. Adoption of his recommendation would result in a condemnation of a sixth class rate of 7 cents on asphaltum from Bayonne, Constable Hook and Warner's, N. J., to Jersey Avenue Station, Jersey City. Ninety cars of asphalt were moved on the challenged rate between October 12, 1918, and November 25, 1919.

After the movement the Central of New Jersey established a commodity rate of 5 cents, to which basis the examiner thinks reparation should be made. The Central of New Jersey, in defending the rate, was confronted with the fact that contemporaneously with the collection of the 7-cent rate it applied a 5-cent rate from two of the same points of origin for application to a station in Jersey City involving a haul of about a mile more. The complainant suggested at the hearing that a switching rate of $5 per car would have been reasonable.

The Central of New Jersey established the rate of 5 cents, after the movement, on the solicitation of the complainant, but it averred that after the lower rate had been established shipments to the complainant fell off. On the hearing it contended that the 7-cent rate was not unreasonable because the hauls in the case were more difficult than the hauls from the same points of origin to the other station in Jersey City calling for mileage, because, among other things, the hauls to the complainant's plant involved crossing the tracks of the Lehigh Valley. The movement under the 5-cent rate which was contemporaneously in effect was much less expensive, the Central of New Jersey contended, but the examiner said its contentions were not convincing.

## REPARATION UNDER TAENZER CASE

The fact that the United States government fixed the prices of nitric and sulphuric acids, during the war, and the further fact that the prices so fixed were probably high enough to enable the shippers to pay the transportation rates established by the government, acting through the Director-General, are not sufficient to warrant the Commission in disregarding the rule in the Taenzer case that the man who pays an unreasonable rate is entitled to an award of reparation.

That is the opinion of Examiner H. W. Archer, expressed in a tentative report on No. 11433, Monsato Chemical Works vs. Pennsylvania et al. He thinks the Commission should condemn, as unreasonable, fifth class applied on imported nitrate of soda, from New York and Baltimore to East St. Louis, because and to the extent that it exceeded 38.5 and 35.5 cents, commodity rates established on July 1, 1920, and conceded by the Railroad Administration to be reasonable.

At the hearing the Railroad Administration contended that, while it was conceded that the fifth class rates of 49.5 and 52.5 cents from Baltimore and New York were unreasonable, the complainant must prove damage by reason of the imposition of the class rates. Archer said the contention seemed to be based principally on the fact that the United States government had fixed the prices of nitric and sulphuric acids, and in doing so had taken into consideration the freight rates in effect, and that the prices were high enough to cover the freight rates.

"In view of the law as at present interpreted, this contention cannot be given serious consideration," said Archer.

## REPARATION ON COAL

An award of reparation on account of unreasonable rates on coal from the inner and outer group of mines in Illinois east of St. Louis, after July, 1917, has been recommended by Examiner John T. Money in a tentative report on No. 11075, Austin Abbott et al. vs. Baltimore & Ohio et al. The complaint as to coal from the southern Illinois mines covered shipments to Springfield, Mo., to which point the Frisco has a short line of 228 miles, while the Missouri Pacific line is 451 miles long.

The same complaint also alleged that rates on coal from Quinnemont, W. Va., and Lilly, Pa., to Springfield were unjust and unreasonable and in violation of the third section. As to that part of the complaint the examiner said the testimony was insufficient to show other than that there had been double increases under General Order No. 28. That showing, he pointed out, was not sufficient for the holding in the Gosline case, which was that the double increase made the rates unreasonable. But there were overcharges on the shipments from Quinnemont and Lilly, which the report recommends be refunded.

The recommendation as to rates from the inner and outer group of mines in southern Illinois is that they be held unreasonable to the extent that, prior to June 25, 1918, they exceeded $2.15 from the inner group, $2.20 from Duquoin, $2.75 from Murphysboro, and $2.70 from the outer group. The effect of that holding, if approved, would be to make the rates on coal from the southern Illinois mines to Springfield the same over all routes. The railroads admitted that the rates should be the same over all routes, but they contended that the lower rates should be brought up, and not the higher ones lowered.

## RATES ON RICE

A proposal for the settlement of contentions about rates on rough rice from California to Lake Charles, La., rates on rough rice from Arkansas and Texas to Lake Charles; on rough rice from interior Arkansas points to New Orleans; and rates on clean rice from Lake Charles to Memphis, Vicksburg, St. Louis and Illinois points, to the Southeast and to Atlantic seaboard territory, has been made to the Commission by Examiner C. I. Kephart, in a tentative report on No. 9922, Lake Charles Rice Milling Company vs. Abilene & Northern et al. The report also covers parts of fourth section applications Nos. 376, 377, 488, 581, 624, 957, 960, 961, and 1618.

Kephart recommended that the carriers be required to accord milling in transit free of charge at Lake Charles on rough rice from California, shipped under blanket rates applying over the Gulf rice belt to Mississippi River destinations, on a holding that failure to accord such transit was and will be unduly prejudicial to the complainant and unduly preferential of its competitors at Mississippi River points, especially New Orleans. He also recommended a holding that the rates on rough rice from points in Arkansas and Texas to Lake Charles, in effect prior to June 25, 1918, were unreasonable to the extent that they exceeded a mileage scale beginning with 5 cents for twenty miles and less and progressing at the rate of 1 cent for each block, which blocks are arranged as follows: 15 miles per block to and including 80 miles; 20 miles per block to and including 100 miles; 25 miles per block to and including 200 miles; 30 miles for 1 block (200 miles and not more than 230); 35 miles per block from 230 miles to 300 miles; 40 miles for 1 block (335 to 375 miles); the next two blocks, 50 miles each, and the last block, 75 miles, or 550 miles and more than 475, making the rate for the greatest distance 22 cents per 100 pounds.

Kephart's third recommendation is that the rates on rough rice prior to June 25, 1918, from the interior Arkansas points

to New Orleans were, and the increased rates are, depressed as the result of combinations on the Mississippi River, and that they were and are sub-normal to the extent of their depression below the mileage scale mentioned in the preceding paragraph, and that they are, and for the future will be unduly preferential of New Orleans and unduly prejudicial to interior points to the extent of such depression.

The fourth recommendation is that the rates on rough rice from Texas points to Lake Charles were, are, and for the future will be, unduly prejudicial to complainants and unduly preferential of complainant's competitors at Orange, Beaumont and Houston, to the extent that they exceeded or exceed the rates for corresponding distances contemporaneously in effect from points in Texas to Orange, Beaumont and Houston.

The fifth recommendation is that the former rates on clean rice from Lake Charles to Memphis and Vicksburg and north to St. Louis and Illinois points were unduly prejudicial to the extent that they exceeded the rates on clean rice from New Orleans by more than 5 cents, or the rates from Beaumont and other eastern Texas milling points to the same destinations, and that the increased rates for the future will be unduly prejudicial to the extent that they exceed the rates from New Orleans by more than 6 cents, or the rates from Beaumont, Texas, and other eastern Texas milling points.

Another recommendation, the sixth in the list, is that the former rates on clean rice from Lake Charles to the Southeast were, the rates after June 25 were, and the rates now in effect are and for the future will be, unduly prejudicial to the extent that they exceeded or exceed rates based 5 cents, 6.5 cents, and 7.5 cents, respectively, less than the aggregate of the intermediate rates from New Orleans.

The seventh recommendation is that the former rates on clean rice from Lake Charles to Atlantic seaboard territory via all-rail, and via rail-and-water, were, and the increased rates are and for the future will be, unduly prejudicial to the extent that they exceeded, or exceed, by more than 10 cents and 12.5 cents, respectively, the rates from New Orleans contemporeously in effect.

The eighth recommendation is that the rates prior to June 25, 1918, on clean rice from Lake Charles to Orange, Beaumont, Houston and Galveston, were unreasonable and unduly prejudicial because they exceeded rates of 9.5 cents, 11 cents, 15 cents and 15 cents, respectively, and that the increased rates are and for the future will be unreasonable and unduly prejudicial to the extent that they exceed rates of 12 cents, 13.5 cents, 19 cents, and 19 cents, respectively.

The ninth recommendation is that the former rates on clean rice from Lake Charles to all points in Texas were, and the increased rates are and for the future will be, unreasonable and unduly prejudicial to the extent that they exceeded, or exceed, by more than 5 cents and 6.5 cents, respectively, the rates on clean rice from Orange contemporaneously in effect to the same destinations.

The tenth recommendation is that the former rates on rice bran from Lake Charles to points in Texas were, and the rates since June 25, 1918, are and for the future will be, unreasonable and unduly prejudicial to the extent that they exceeded, or exceed, by more than 3 and 4 cents, respectively, the rates contemporaneously in effect from Orange, Texas, to the same destinations.

## REPARATION ON GUARD RAILS

Examiner J. Edgar Smith, in a tentative report on No. 11548, Benjamin T. Crump Company vs. Director-General, as agent, has recommended reparation on account of an unreasonable rate on a carload of automobile guard rails, from Milwaukee, Wis., to Richmond, Va. Second class was imposed, there being no rating on carloads. Smith recommends reparation to the basis of the fourth class rate of 39 cents.

## REPARATION ON REFUSE, ETC.

In a tentative report on No. 11579, the Pusey & Jones Company vs. Director-General, as agent, Examiner Frank E. Mullen has recommended reparation on account of an unreasonable rate on refuse, ashes, brick, excavated material, flue dust, sand and slag from Midvale, Pa., to Gloucester, N. J., during the period of federal control. Sixth class of 9 cents a 100 pounds was collected. Subsequently a rate of $1.10 per net ton was established and Mullen thinks reparation should be down to that basis.

## GASOLINE FOR EXPORT

An order of dismissal has been recommended by Examiner Frank E. Mullen, in a tentative report on No. 11185, Union Petroleum Company vs. Fort Worth & Denver City et al., on a holding that the rate on gasoline in tank cars from Iowa Park, Tex., to Westwego, La., for export, was not unreasonable. Mullen said the shipments were misrouted. The complaint, according to Mullen, was based on the fact that the domestic rate was imposed on the shipments and that later a lower export rate was established. The shipments were misrouted because sent over routes over which a rate of 52.5 cents applied, while a rate of 44.5 cents was in effect over another route. The export rate is now 24.5 cents.

## COAL, OKLAHOMA TO ARKANSAS

Examiner E. L. Gaddess has recommended the dismissal of No. 11347, Southern Fuel Company vs. Bauxite & Northern et al., on a holding that the rate legally applicable on 25 carloads of chestnut screened coal from Bewer, Okla., to Bauxite, Ark., was not unreasonable or otherwise unlawful.

### REPARATION ON COTTONSEED

An award of reparation is recommended by Examiner Warren H. Wagner in a tentative report on No. 11500, Empire Cotton Oil Company vs. Nashville, Chattanooga & St. Louis et al., on a proposed finding that the rate applicable on cottonseed from Somerville, Tenn., to Atlanta, Ga., was unreasonable to the extent that it exceeded $4.50 per ton. The shipments moved during July, October and November, 1919.

### RATE ON COTTONSEED

Recommendation that the complaint be dismissed is made by Examiner Warren H. Wagner in a tentative report on No. 11349, Empire Cotton Oil Company vs. Seaboard Air Line et al., on a proposed finding that a rate of $7.30 per ton on cottonseed from Henderson, N. C., to Dublin, Ga., was not shown to have been unreasonable. The shipments involved moved in December, 1919, and January, 1920. The complainant asked reparation and a rate of $5.50 per ton for the future.

## REPORT ON CAR CONDITIONS

*The Traffic World Washington Bureau*

Requirements for box cars, stock cars, refrigerator cars, open top cars, and flat cars continued heavy in the two weeks' period ending October 29, according to the semi-monthly report of W. L. Barnes, executive manager of the car service division of the American Railway Association, issued October 30. The situation with respect to auto cars was reported as the same as in the report as of October 14, when a decreased demand for that class of equipment was noted.

The division's semi-monthly bulletin of percentages of freight cars on line to ownership as of October 15, class I roads, shows that in the Eastern district the percentage was 97.8, as compared with 100.1 on the same date in 1919; in the Allegheny district, 100.1, as compared with 100.1 in 1919; Pocahontas district, 73.5, as compared with 82.9 in 1919; Southern district, 89.5, as compared with 91.6 in 1919; Northwestern district, 97.1, as compared with 106.7 in 1919; Central Western district, 94.7, as compared with 104.5 in 1919; Southwestern district, 107, as compared with 105.3 in 1919; Canadian roads, 96, as compared with 92.1 in 1919.

The summary of general conditions follows:

Box Cars: Requirements continue heavy. There is additional evidence of increased demand for cars for grain loading. While the offerings have not been as heavy as expected, it has not been possible to supply all cars required, and at some points grain is on the ground awaiting movement. Additional orders have been placed calling for a heavy movement of box cars to western grain-carrying roads in an effort to improve the present situation. The loading of ventilated box cars with dead freight must be confined to points in direct line to home roads, in order to build up supply for heavy fall movement of perishable freight.

Auto Cars: There has been a decrease in the demand for automobile cars account reduced manufacturing schedules. Such cars should continue to be loaded to auto manufacturing territory. Cars should not be moved empty except when specifically ordered.

Stock Cars: Demand heavy for protection of stock loading and for building up supply on western lines for movement of range cattle and sheep, and efforts must be continued to move cars either to owning lines, or in accordance with specific orders issued for necessary relocation.

Refrigerator Cars: There is continued heavy demand for refrigerators in all sections, particularly in eastern, middle western and extreme western territory, and it is necessary that all railroads continue drive to promptly release and move refrigerators to loading territory in accordance with current orders.

Open Top Cars: The production of bituminous coal should average better than twelve million tons per week for the month of October, which is a very satisfactory increase over preceding months. As a result of service orders of the Interstate Commerce Commission supplemented by the special efforts of the individual railroads, a substantial improvement has been made in car placements on the greater number of coal loading roads during the past two weeks. The movement of coal to upper lake ports is now progressing on a satisfactory basis and it is felt that the fuel stocks in the northwest will have been fully replenished before navigation formally closes. It continues of urgent importance that all roads police existing instructions with respect to the handling of coal carrying equipment, observing in particular the service orders of the Interstate Commerce Commission that maximum use of coal cars will be had during this period of emergency.

Flat Cars: Demand for this type of equipment continues to exceed the supply in the southeast for lumber and log loading. Flats should be promptly released and moved in accordance with specific orders to the territories as directed.

# INTERPRETATION OF TARIFFS

(Twenty-third of a series of articles written for The Traffic World by R. R. Lethem.)

In order to secure the prompt release of equipment, the carriers have established car service rules and, through the medium of demurrage charges, which represent, in part, compensation to the carrier for the use of its equipment and, in part, a penalty imposed on shippers for the detention of cars, they have endeavored so to regulate the use of their equipment as to accord all shippers the fullest and freest use thereof. Carriers are not obligated to provide storage in cars, for the business of a railroad is transportation, not storage; therefore, storage at destination is a service not covered by the transportation rate and, if such storage is provided, a reasonable charge may be made for such service in addition to the rate for transportation.

Somewhat analogous to demurrage charges and the rules governing the assessment thereof are the storage regulations of the carriers. Under these regulations, which are intended primarily to prevent congestion of the carrier's terminal facilities and to insure prompt removal of freight from the carrier's premises, a charge is made for the time freight is held on railroad premises awaiting delivery to consignee after its removal from cars and after free time allowed under demurrage and storage rules has expired. This storage charge is also imposed on freight held on railroad premises to complete a shipment or for forwarding directions. With respect to explosives and other dangerous articles held in cars, storage charges are assessed in addition to demurrage and track storage charges.

Another form of demurrage charge is that known as a track storage charge, which is assessed in addition to the regular demurrage charge, such a charge being in reality an additional demurrage charge, the imposition of which is made necessary by conditions existing at a particular yard or yards in a city, by reason of excessive delays in unloading cars.

The present demurrage regulations of the carriers are known as the "National Car Demurrage Rules and Charges" and are those adopted by the American Railway Association and tentatively indorsed by the Interstate Commerce Commission in January, 1916, as modified by General Orders Nos. 7 and 7-A of the Director General of Railroads, United States Railroad Administration, and by changes made as the result of agreement between shippers, as represented by the National Industrial Traffic League, and the American Railway Association.

The present storage rules are those adopted by the American Railway Association, approved by the National Industrial Traffic League, and indorsed by the Interstate Commerce Commission in May, 1914. These rules, likewise, have been modified somewhat since they were adopted by the American Railway Association.

At the present time, the uniform demurrage rules and charges are published for account of practically all of the larger lines and for many, if not the majority of the short lines, in Agent J. E. Fairbanks' Demurrage Tariff No. 4-A, I. C. C. No. 8, and Agent C. B. Guthrie's Tariff No. 5, I. C. C. No. 17. Likewise, the uniform storage rules and charges are published in Agent J. E. Fairbanks' Uniform Storage Tariff No. 1-B, I. C. C. No. 9, and Agent C. B. Guthrie's Tariff No. 5, I. C. C. No. 17.

Some carriers, however, still publish demurrage and storage rules, applicable at points on their lines, in their individual tariffs.

While it is not possible to discuss here in detail all or any considerable number of the numerous rules governing the assessment of demurrage and storage charges, those that are of general interest will be referred to and explained in some detail in connection with examples.

Rule 2, of the Demurrage Rules, in Section "A" thereof, provides that forty-eight hours (two days) free time will be allowed for loading or unloading all commodities and then specifies what is included under the terms "loading" and "unloading."

Loading, it provides, includes the furnishing of forwarding directions on outbound cars. We will, therefore, suppose that we have a plant located on a certain railroad, which is served by a spur track, known as an industry track and that we order an empty car from the railroad for loading a carload shipment that we are making.

Under the provisions of Section A, Rule 6, a car for loading is considered placed when the car is actually placed or held on orders of the consignors. If the car is held on our orders—that is, if it can not be placed because of the condition of our track, or for some other cause attributable to us—the carrier's agent must send or give us written notice of the fact, and this will be considered constructive placement.

Under the provisions of Rule 2, we have forty-eight hours' time (for which no charge will be made) after the placing of the car, in which to load this car and furnish the carrier with forwarding directions in the form of a shipping order or a signed bill of lading.

This forty-eight hours, known as free time, in accordance with Section D of Rule 3, will begin with the first 7:00 a. m. after the actual or constructive placement of the car. By "actual placement" is meant the placing or spotting of the car on our track by the carrier in a position accessible for loading or at a point previously designated by us. In the event that it is impossible, for any cause attributable to us, for the carrier so to spot the car, as for instance, because of other cars occupying the track at the time the carrier attempts to spot the car, the car will be considered constructively placed if held by the carrier and notice is given in accordance with Section A of Rule 6, or when placed on any railroad track or portion thereof assigned for our individual use. If there has been an actual placement at exactly 7:00 a. m., the free time will begin at that 7:00 a. m., the actual placement being determined by the precise time the engine cuts loose from the car.

In computing free time, Sundays and legal holidays (national state and municipal), but not half holidays, will be excluded, except that when the average agreement has been entered into, when a car has accrued four debits a charge for all subsequent detention will be made, and this will apply on all subsequent Sundays and legal holidays, including a Sunday or holiday immediately following the day on which the fourth debit begins to run.

Assume, now, that we make carload shipments but that we have no industry track and, therefore, must load our shipments into cars placed on public-delivery or team tracks and that, desiring to make a certain shipment, we order a car from the railroad over which the shipment is to move, this car to be placed on a certain day specified in our order for the car. We have, in accordance with Section A of Rule 2, forty-eight hours free time in which to load this car and furnish forwarding directions to the carrier, this free time beginning to run from the time specified in Section A of Rule 3—namely, from the first 7:00 a. m. after placement on the public-delivery track—no notice of placement being given us by the carrier; provided, however, that if the car is not placed within twenty-four hours after 7:00 a. m. of the day for which it is ordered the free time will begin to run from 7:00 a. m. after the day on which notice of placement is sent or given us by the carrier.

Suppose that, in the first instance, the car is actually placed on our industry track at 3:00 p. m. of Friday, but that we do not complete the loading of the car and furnish forwarding directions to the carrier until 1:00 p. m. of the following Tuesday. Omitting Sunday, in accordance with the note preceding Section A of Rule 2, we find that a fraction of a day over the free time of forty-eight hours accorded under Section A of Rule 2, has elapsed and, therefore, in accordance with Section A of Rule 7, we will be assessed $2.00 or $3.00, depending on whether the demurrage accrues prior to, or on, or after December 1, 1920, on which date the charge will be $3.00, it being understood that we have not entered into the average agreement provided for in Rule 9, and that the movement of the car is interstate—that is, from a point in one state to a point in another state, or through another state, when moving between two points in the same state—or that it is intrastate from a point to a point located within one of the states listed in Item 9-A of Supplement No. 4 to J. E. Fairbanks' Demurrage Tariff No. 4-A, I. C. C. No. 8 Otherwise, the charge will be $2.00, in accordance with Item 9 of the original tariff.

Under the revised rule 7, effective December 1, 1920, a charge of $3.00 per car per day would be made for the first four days after free time has expired, $6.00 for each of the next three days and $10.00 for each succeeding day, instead of a charge of $2.00 for the first four days and $5.00 for each succeeding day, as provided for in the present rule.

Throughout the remainder of this article where reference is made to any rule or charge, it is to be understood that the rule or charge is that governing interstate movements or intrastate movements within one of the states which have authorized the application of the interstate rules and charges on traffic moving within such states, as it seems unnecessary, in every example, to call attention to the difference in the rules resulting from the failure of certain of the state commissions to authorize the application of the present interstate rules on traffic moving within such states.

Assume, now, that we have manufacturing plants on industry tracks of the Baltimore & Ohio Railroad at Cleveland, Ohio, and that we receive numerous carloads of lime from various points of origin, but that we have not entered into the average agreement. Suppose that a carload of lime is shipped to us, arriving in Cleveland Sunday at 8:00 a. m., October 17, 1920, but that the delivery point is not specified on the billing. Within twenty-four hours after the arrival of the car in Cleveland—namely, at 3:30 p. m. Monday—We receive written notice of its arrival from the Baltimore & Ohio Railroad, this notice having been mailed Monday at 10:00 a. m., giving the car initials and number and the point of shipment, in accordance with Section A of Rule 4, on receipt of which notice we order the car delivered at a certain plant, this order being received by the railroad Tuesday at 3:00 p. m. In accordance with our delivery instructions, the car is placed on our industry track at the plant designated in our order at 6:00 p. m., Wednesday.

However, owing to the conditions of the weather, because of an extremely hard rain lasting until 6:00 p. m. of Friday, it was impossible for us to begin the unloading of the car without injury to the freight until 7:00 a. m. of Saturday, the unloading of the car not being completed until Tuesday afternoon. Under the provisions of Section B-1 of Rule 3, on cars held for orders, as in the present instance, the forty-eight hours of free time will be computed from the first 7:00 a. m. after the day on which notice of arrival is sent or given to the consignee, regardless of whether or not such cars have been placed in position to unload. As the notice of arrival was sent on Monday, free time begins to run at 7:00 a. m. Tuesday. However, as the order for placement was received by the carrier Tuesday at 3:00 p. m., and the car was not placed until 6:00 p. m. Wednesday, in accordance with the note following Section B-1 of Rule 3, the time between the receipt of the order and the placement of the car is to be deducted from the total time the car is detained. Furthermore, since it rained so hard at to make impossible the unloading of the car from the time it was placed until 7:00 a. m. Saturday, in accordance with Section A-1 of Rule 8, Thursday and Friday are to be deducted from the total time of detention.

The unloading of the car not being completed until the following Tuesday afternoon, after excluding Sunday, we find that the total time from which the forty-eight hours free time is to be deducted is four days—namely, the first Tuesday after notice of arrival was sent by the carrier, Saturday, and the following Monday and Tuesday. We, therefore, will be assessed for two days' demurrage at $2.00 a day, in accordance with Section A of Rule 7. In order, however, to obtain the extension of time because of weather interference, we must present to the agent of the Baltimore & Ohio within thirty days from the time the demurrage bill is rendered, a claim in writing, stating in full the conditions that prevented the unloading of the car within the free time.

Now, suppose that we have a plant on an industry track at St. Louis, Mo., served by the St. Louis & San Francisco Railroad, and that we receive, from time to time, carload shipments of pig iron from Birmingham, Ala., and furthermore that we have not entered into the average agreement, that on September 20, 22, and 25, respectively, cars were shipped to us via the St. Louis & San Francisco Railroad, but that all three cars were delivered on our industry track the same day, October 13. Under Section C of Rule 4, delivery on an industry track constitutes notification, so that under such circumstances we are not entitled to notice of arrival in accordance with Section A of Rule 4.

Under the provisions of Section A of Rule 2, forty-eight hours' free time is allowed for unloading but, inasmuch as the three cars were delivered to us the same day, notwithstanding that they were shipped from Birmingham on different days, we are not required to unload all three cars within forty-eight hours, but are entitled to a total of 144 hours, in accordance with Section B-2 of Rule 8; provided, however, that if any one of the cars is released before the expiration of the forty-eight hours' free time, the free time on the next car will begin to run from the first 7:00 a. m. following such release. However, in order to obtain the benefit of this provision of the demurrage rules, we must present to the carrier's agent a claim in writing within thirty days after the date on which the demurrage bill is rendered, supported by a statement showing the date and point of shipment of each car.

Under Section D of Rule 3, the free time on these cars will be computed from the first 7:00 a. m. after actual placement on our track, so that as the three cars were actually placed on October 13, the free time begins to run at 7:00 a. m. of the fourteenth. If we unload one of the cars the fourteenth, we have 96 hours, and not 120 hours, left in which to unload the other two, as the free time on the next car begins to run at 7:00 a. m. of the fifteenth, in accordance with paragraph 2 of Section B of Rule 8. Likewise, if we unload the second car on the fifteenth, the free time on the third car will begin to run at 7:00 a. m. of the sixteenth, and we have left only forty-eight hours' free time in which to unload. If we release the car within that time no demurrage will be assessed but if, for any reason, we cannot unload this car within the remaining forty-eight hours' free time, demurrage will be assessed at the rate of $2.00 a day or fraction of a day for the first four days' detention of the car after 7:00 a. m. of the eighteenth and $5.00 a day for each succeeding day, in accordance with Section A of Rule 7.

The present bunching rule covering cars for unloading or reconsigning is restricted to apply only on cars "originating at the same point or at intermediate points, moving via the same route." The revised rule to become effective December 1, 1920, eliminates this provision entirely.

We next assume that we receive our inbound carload shipments at designated public-delivery or team tracks of the carriers, entering our city, Memphis, Tenn. (not having an industrial track), and dray such shipments to our warehouse. Let us suppose that a carload shipment of furniture was forwarded to us from Grand Rapids, Michigan, and reached Memphis at 7:00 a. m., October 5, 1920, over the Illinois Central Railroad. Notice of arrival, in accordance with the provisions of Section A of Rule 4, was sent and received by us on that date. If the car was placed on the team track within twenty-four hours after the notice of arrival sent by the carrier, the forty-eight hours' free time for unloading, accorded under Section A of Rule 2, will be computed from the first 7:00 a. m. after placement of the car on the public-delivery track, under Paragraph 1 of Section C of Rule 3. We will suppose, however, that the car is not placed on the public-delivery track within twenty-four hours after notice of the arrival of the car is sent or given us, which notice should be in writing or, in lieu thereof, as otherwise agreed to in writing between the Illinois Central and ourselves, a notice of placement must be sent or given us, in accordance with Section A of Rule 4. Under such circumstances the forty-eight hours' period of free time will be computed from the first 7:00 a. m. after the day on which the notice of placement has been sent or given us. If delivery cannot be made on the public-delivery tracks designated by us, because of such tracks being fully occupied or from other causes beyond the control of the carriers, notice must be sent or given us that delivery will be made at the nearest available point to us, specifying the point where delivery will be made. Such delivery will be made unless, before delivery, we indicate a preferred point which is available, in which case the delivery preferred by us will be made. This is in accordance with Paragraph 1 of Section B of Rule 5. In the first instance, the car having arrived early in the morning of October 5, and notice of arrival having been given us on that date and the car placed (say at 10:00 a. m. of October 6) the forty-eight hours' free time is to be computed from 7:00 a. m. of October 7. In the second instance, the car not having been placed until the morning of October 7 at 9:00 a. m., and notice of placement sent or given us at 1:00 p. m. that day, the forty-eight hours' free time will be computed from 7:00 a. m. of October 8.

Now, suppose we have a manufacturing plant on an industry track of the Pennsylvania Railroad at Indianapolis, Indiana, and that we have entered into the average agreement provided in Section G of Rule 9. In order to make the example simple we will assume that in September, 1920, we received a total of six cars, three cars on September 2 and one each on September 4, 15 and 18. The three cars placed on the second were released within the first twenty-four hours of the forty-eight hour period of free time; the car placed on the fourth was held five days exclusive of Sunday and Labor Day, the fifth and sixth; the car placed on the fifteenth was held two days, and the car placed on the eighteenth was held eight days, exclusive of Sunday, the nineteenth. On the three cars placed on the second we have, therefore, earned three credits; on the car placed on the fourth we will be charged with three debits; the car placed on the fifteenth was released within the free time; on the car placed on the eighteenth we will be charged with four debits, which may be offset by credits and two debits for which a charge of $5.00 each will be made, in accordance with Section A of Rule 9, which provides that when a car has accrued four debits a charge of $5.00 a car a day, or fraction of a day, will be made for all subsequent detention, including subsequent Sundays and legal holidays and including a Sunday or holiday immediately following the day on which the fourth debit begins to run. Summing up the credits and debits we find that we have earned three credits, which deducted from seven debits, leaves four debits to be paid for at $2.00 each, in addition to the two debits at $5.00 each, accruing for the detention over four days after free time of the car placed on the eighteenth.

Under Section D of Revised Rule 9 (average agreement), effective December 1, 1920, the charge for debits in excess of credits at the end of the calendar month will be $3.00 per debit.

Under Section A of Revised Rule 9 (average agreement), effective December 1, 1920, when a car has accrued four debits, a charge of $6.00 per car per day or fraction of a day, will be made for each of the first three days thereafter, and for each succeeding day or fraction of a day the charge will be $10.00.

In the event we have earned credits on cars held for loading in September, we cannot, under the provisions of Section B of Rule 9, use them in offsetting the seven debits accruing on the cars held for unloading, nor can we use credits earned on cars held for unloading to offset debits accruing on cars held for loading. Furthermore, if the credits earned in September had exceeded the debits instead of the debits exceeding the credits, as in the example given above, the excess credits earned that month could not be used in offsetting debits accruing in another month, nor will a carrier, where credits exceed debits in any month, make any payments because of the excess of credits over debits, nor shall one, under the present rules, be entitled to cancellation or refund of demurrage charges because of weather interference, or the bunching of cars, in accordance with Section E of Rule 9.

However, under the provisions of Section E of Rule 9 of Item 11-A, effective December 1, 1920, where bunching has been caused by strike of carriers' employes, or where shipments of coal, withheld by the carrier to protect its fuel supply, are subsequently delivered to consignee in accumulated numbers, the con-

signee is entitled to the cancellation or refund of demurrage charges on such cars, in accordance with Sections A and B of Rule 8.

The Commission, in conference October 6, 1919, adopted the following Conference Ruling with reference to the tariff which will govern the assessment of demurrage charges:

Demurrage and Storage Rules.—Upon inquiry and to remove the confusion that exists among carriers and shippers, Held, That demurrage, track storage, and off-track storage not in transit, are controlled by the tariffs in effect contemporaneously with the accrual of these services, and, therefore, are subject to such changes as lawfully may be made in the applicable tariff during the period of accrual; that off-track storage in transit is controlled by the tariffs in effect upon the date of shipment (Rescinding Conference Rulings 466 and 473).

In Treasury Decision 3022, as follows, the Commissioner of Internal Revenue outlines what amounts paid for demurrage and storage are subject to tax:

Amounts paid for storage if a part of transportation are subject to tax. Storage after delivery to owner is not a part of transportation. Storage by or in behalf of a carrier furnished to a shipper on receipt of his goods for shipment, or storage by or in behalf of a carrier at destination before delivery to owner, whether in outside warehouse or otherwise, is a part of transportation and subject to tax. However, where the consignee has been notified of the arrival of a shipment at destination and fails to remove it within a reasonable time after such notification, the transportation is considered as having ended after such reasonable time, and charges for storage thereafter are not subject to tax. Demurrage is a charge and a penalty imposed by a railroad company for the detention of its cars and the occupation of its tracks beyond a reasonable time after the arrival of the goods; it is not a part of the transportation and is not subject to tax. A "reasonable time," as used in this Article, is held to mean the free time allowed by the carrier under its tariff.

Paragraph 1, of Section 4, of the uniform bill of lading provides:

Property not removed by the party entitled to receive it within forty-eight hours (exclusive of legal holidays) after notice of its arrival has been duly sent or given may be kept in car, depot, or place of delivery of the carrier, or warehouse, subject to a reasonable charge for storage and to carrier's responsibility as warehouseman only, or may be, at the option of the carrier, removed to and stored in a public or licensed, warehouse at the cost of the owner and there held at the owner's risk and without liability on the part of the carrier, and subject to a lien for all freight and other lawful charges, including a reasonable charge for storage.

Under this provision, the liability of the carrier as a common carrier ceases forty-eight hours after notice of arrival has been sent or given but, inasmuch as the free time does not begin to run, in most instances, until after the first 7:00 a. m. after placement and, furthermore, that more than forty-eight hours' free time is allowed under certain circumstances, this provision and that of Paragraph 2 of Section 1 of the bill of lading conflict with the provisions of the demurrage and storage tariffs with respect to the period of free time, and, furthermore, would terminate the carrier's liability as a common carrier, even though cars were not placed until after the expiration of the forty-eight hours' time specified in the bill of lading provisions.

There are other provisions of the uniform demurrage rules that govern under certain circumstances which should be noted, as, for instance, the provisions of paragraph 2 of Section A of Rule 8, with respect to the extension of time when the lading, at the time of actual placement, is frozen, the rule which becomes effective December 1, under Supplement 4 to Agent J. E. Fairbanks' Tariff No. 4-A, I. C. C. No. 8, providing for an additional 48 hours', or a total of 96 hours', free time in which to unload such cars, and the provisions of Sections C, D, E and F of Rule 8, relating to the cancellation or refund of demurrage assessed or collected for the detention of cars through causes named therein; the provisions of Section B of Rule 1 stating what cars are not subject to the demurrage rules, and the provisions of Section B of Rule 2 with respect to the period of free time allowed on cars held for reconsignment or in transit on order of consignor, consignee or order, or for surrender of bill of lading or payment of freight charges when destined to or for forwarding by a connecting line and cars held in transit and placed for inspection or grading.

Examples showing the workings of these rules might be given, but those given above appear to cover the use of the demurrage tariff in sufficient detail for the purpose of this article.

## GRAIN MINIMA CONFERENCES

*The Traffic World Washington Bureau*

On request of state commissions the Interstate Commerce Commission has ordered Traffic Director Hardie to hold conferences with state commissions, shippers and railroads, with a view to agreement as to minima on grain and grain products. The first of these will be held at the Hotel Jefferson, St. Louis, November 15. This question of minima arises out of the fact that tariffs filed under federal control establishing minima expire December 30. The railroads have asked for their indefinite continuance. If they were not continued varying minima would be re-established and there would be confusion owing to the difference between interstate and state tariffs as well as the differences in various rate territories.

# Questions and Answers

**In this department will be answered questions of both legal and practical nature that confront persons dealing with traffic. A specialist on interstate commerce law, who is a member of our legal department, will give his opinion in answer to any simple question relating to the law of interstate transportation of freight. A traffic man of long experience and wide knowledge will answer questions relating to practical traffic problems. We do not desire to take the place of the traffic man but to help him in his work. Persons desiring immediate answer by mail or wire or a more elaborate treatment of any question—by the citation of authorities in a legal opinion, for instance—may obtain this kind of private service by the payment of a reasonable fee. The right is reserved to refuse to answer in this department any question, legal or traffic, that it may appear to us unwise to answer or that involves a situation too complex for the kind of investigation herein contemplated.**

**Address Questions and Answers Department,**
**Traffic Service Corporation, Colorado Building, Washington, D. C.**

### Measure of Damages in Salvaged Shipment

**Kansas.**—Question: May 28, 1920, we sold some flour to a broker in New York which was shipped within the contract time. The broker instructed us to bill this flour and invoice it direct to another party in New York at 20 cents a barrel less than the price for which we had sold it to him, charging his account with the difference. The broker was applying this flour on one of his sales to the other party, which has no connection with our sale to him, and we have no knowledge of the terms of same. The car arrived in New York with 90 sacks of flour wet and moldy, unsound and unsalable. The consignee unloaded the good flour and left 90 sacks of wet flour in the car and refused to accept it. The railroad company shipped the flour to another concern, at another point, to be salvaged. This party remitted to the railroad company the amount of the salvage less the freight charge from New York. The salvage realized was much less than the price for which we sold it to the broker. Is the railroad company liable for the full value of these 90 sacks on the basis of our contract of sale to the broker, and who is responsible for the freight charges from New York to the point where flour was salvaged?

Answer: In accordance with the decisions of the federal courts in the McCaull-Dinsmore Company case, the carrier is liable for the difference between the salvage price of the damaged flour and the market price at New York of the flour in good condition at the time when it arrived, less the transportation charges on the car from shipping point to New York. The charges from New York to the point where the flour was salvaged are not chargeable against the shipper or the consignee.

### Measure of Damages Where Value of Shipment Depreciated at Destination on Arrival

**Illinois.**—Question: On account of the recent marked decline in the price of sugar, we are confronted with a new angle in determination of proper basis of adjustment of freight claims on this class of shipments.

A carload of barreled sugar was shipped us from Crockett, Calif., on August 10, and on being unloaded at Chicago, September 9, checked a number of barrels crushed, contents scattered on floor of car and partly sifted, due to apparent rough handling. Claim was filed by us based on the invoice price of 22¼ cents per pound for that portion of the damage and shortage lost through sifting and in connection with which railway now advise that because the prevailing market price at the time this shipment arrived at destination was in the neighborhood of 15 cents per pound, claim should be reduced accordingly and loss based on market value at destination and entire claim amended before payment can be considered.

We assume this contention is an attempted defense by the carrier under the recent Supreme Court decision in the case of C. M. & St. P. vs. McCaull-Dinsmore Company, but believe that such contention is untenable, owing to it being our interpretation from this decision that it was the intention of the Supreme Court to fully sustain the provisions of the Cummins amendment to the act to regulate commerce, which, it will be recalled, provides in part that carriers issuing "bill of lading shall be liable to the lawful holder of it for any loss, damage or injury to such property * * * notwithstanding any limitation of liability or limitation of the amount of recovery, or representation or agreement as the value in any such receipt or bill of lading * * * and any such limitation * * * is hereby declared to be unlawful and void."

It further appears, according to conclusions reached by the Supreme Court, that bill of lading clause basing the carrier's liability on the invoice price at the time of shipment merely offered a convenient way of finding the value, and was not conclusive nor necessarily preventing a recovery of the full actual loss and as in that particular case the claimants appeared to have suffered a greater loss than represented by the invoice value, due to advance in market conditions, is it not reasonable to assume that, in view of the court having sustained the claim for the greater loss based on existing market conditions at destination, that where the situation is reversed, as in our case, we ought to, in turn, be reimbursed for the greater loss as repre-

sented by the invoice price, particularly because of the contract of carriage being based on conditions of uniform bill of lading?

Answer: The Cummins amendment clearly placed upon the carrier liability for the full actual loss, damage, or injury to the property transported, which is caused by it, and makes unlawful any limitation of that liability, or of the amount of recovery thereunder, and in the McCaull-Dinsmore Company case, the lower federal court, 252 Federal 664, held that any stipulation by which it is agreed that the value shall be fixed at shipping point is unlawful and void under the Cummins amendment. From this it naturally follows that any stipulation by which the value, arrived at at destination point, if that value is less than the actual loss, damage or injury to the shipment, must also be a limitation of liability and unlawful and void under the Cummins amendment. In fact, the United States Supreme Court said, in affirming the judgment of the United States Circuit Court of Appeals in the McCaull-Dinsmore Company case, that the purpose of the Cummins amendment was to resore the common law rule, in loss and damage claims, and that it is "but an embodiment of the plain fact that the actual loss caused by breach of a contract is the loss of what the contractee would have had if the contract had been performed."

Consequently, if the car of sugar was worth 22¼ cents or more per pound to the consignee at destination, or if the consignee had sold it at that or a higher price at destination, the breach of contract by the carrier in the loss or injury resulting would be gauged by the loss the consignee suffered, and not wholly by the value of the loss or damaged shipment at destion on its arrival. If, however, the consignee could purchase like sugar on the market at destination at 15 cents a pound, then that price would be the one at which to compute the damages, because had the carrier performed its contract of carriage, 15 cents per pound was the actual value of the sugar to the consignee, as the consignee would suffer a loss between that price and the invoice price even if the carrier had not breached its contract. In other words, damages for the breach of a contract can never exceed the benefit which would accrue to the party from its performance.—Hutchinson on Carriers, 3d Edition, Volume 3, section 1561.

### Holding C. O. D. Shipment at Destination

**Michigan.**—Question: From time to time we are called upon by the express company to pay transportation charges on express shipments which have been returned to us before the expiration of the prescribed time of thirty days. This, however, is more frequent with C. O. D. shipments which carry our instructions to hold at destination for a period of sixty days. A case which has recently come to our attention and which appears to be unreasonable is as follows:

A shipment was forwarded to one of our customers on a C. O. D. basis, same carrying instructions to hold at destination for a period of sixty days. Upon arrival of the goods the customer refused to accept the shipment, and while the express agent at destination notified us of our customer's action, yet we were not given sufficient time in which to furnish necessary instructions, which in this case would have called for the shipment to be forwarded to our dealer controlling the territory in which our customer was located. Upon return of the shipment to us we were, of course, required to pay the outgoing and incoming charges, which, we contend, should not be collected.

However, the claim department of the American Railway Express Company has endeavored to make an adjustment of the charge by figuring charges from this point to the original destination plus the charges to the point of our dealer and making a refund to us for the difference between that charge and the total charge as collected from us. We fail to understand where the express company has completed their service and for that reason do not believe they are entitled to any earnings, as they ignored our instructions to hold the shipment sixty days. We would, therefore, be pleased to have you answer whether or not the express company is entitled to any earnings and, if so, what proportion.

Answer: The uniform express receipt contains the provision, reading, "If any C. O. D. is not paid within thirty days after notice of non-delivery has been mailed to the shipper, the company may, at its option, return the property to the consignor." But this provision is modified by rule 14 (1) of the published rules of express companies, as found in Official Express Classification No. 26, effective December 10, 1919, which provides that "If a C. O. D. shipment is refused or cannot be delivered within twenty-four hours, the shipper must be immediately notified and, if not disposed of within thirty days of such notice, it may be returned subject to charges in both directions, except that where shipper requests, either by labeled instructions on the shipment, or otherwise in writing, that the shipment be held for not longer than sixty days after date of its arrival at destination, it may be held for such period."

As the published rules of the express companies cannot be disregarded by them or the shippers, it follows that if you gave proper written instructions to the express company to hold the shipment in question for a period of sixty days after its arrival at destination, and the company failed to follow such instructions and instead returned the shipment to you at original shipping point, that it cannot assess you with the return charges on such shipment. In fact, if the company did not give you sufficient time to furnish it with reforwarding instructions, it should carry the shipment to reforwarding point at the published charge for shipping to original point, plus charge from the latter to the reforwarding point.

### Presenting Invoice as Condition Precedent to Payment of Claim

**New York.**—Question: I represent a firm having their warehouses located in one central point, from which they ship merchandise to their several branch stores located in cities within two-hundred-mile radius. I am having considerable difficulty with carriers in forcing payment of our claim, because (1) all bookkeeping is done at their general office, so shipments are forwarded with no invoice covering. Claims are presented with an invoice wherein we state prices charged railroads represent the market value of the goods at time and place of shipment. They refuse to honor this sort of invoice and demand copy of invoice sent with goods, which is not issued, or ask us to base our claims on our purchasing price to the warehouse. This we know is wrong. Are we not entitled to market price at time we make shipment to our stores?

Answer: The carriers are wrong in the position they take and cannot justify it, either by their own contract of carriage or the law applicable to the same. The stipulation of the uniform bill of lading is, in effect, that the actual value of the lost or injured property shall be arrived at from the bona fide invoice price, if any, to the consignees. Consequently, if your shippers do not issue invoices covering shipments consigned to their several branch stores, the carrier cannot rightfully demand a presentation of invoices as a condition precedent to a consideration and settlement of your claims. Further, by ruling of the Interstate Commerce Commission In re Bills of Lading, 52 I. C. C. 710, and the United States Supreme Court, in the case of C. M. & St. P. Railway Company vs. McCaull-Dinsmore Company, the Cummins amendment to the act has now so modified the above stipulation in the uniform bill of lading as to require carriers to compute damages for which they are liable on the basis of the market value of the goods at destination, at the time they should have arrived, less the unpaid transportation charges, if any.

### Perishable Goods Moving in Box Cars

**Illinois.**—Question: Our shippers have had a lot of trouble in collecting loss and damage claims covering fruits, vegetables and soda water frozen in transit. In some cases shipments go through in a reasonable time and are frozen. In other cases they are delayed. In all cases the carriers furnish box car service. Sometimes carriers note on bill of lading, "Owner's risk of freezing," and at other times no exception is made. Will you please advise if carriers are relieved of liability in such cases?

Answer: The matter of shipping less-than-carload shipments of perishable freight in box cars is usually covered by the carrier's published tariff rules and regulations, and has received the consideration of the Interstate Commerce Commission In re Perishable Freight Investigation, 56 I. C. C. 608. These tariffs contain an alternative protective service provision through which either the shipper is to assume the risk of transportation in consideration of the lower rate, or the carrier is to assume the risk by receiving a higher published rate. If the shipper assumes the risk, the carrier is not liable except when the loss or damage results from acts of negligence by the carrier. In rule 620, relating to box-car service by the carriers, the Interstate Commerce Commission, in the aforesaid case, prescribe the conditions under which such service might be performed, but refuses to allow the carriers to place upon the shippers the sole risk of loss or damage by heat or cold to perishable shipments moving in box cars. In other words, unless the shipper has expressly assumed the risk of transportation in consideration of a reduced rate, or unless the loss results from the act of God or the fault of the shipper, the carrier cannot limit its liability for loss or damage to perishable freight moving in box cars.

### Shipment Billed to One Point, Notify at Another

**Indiana.**—Question: The writer billed an order shipment as follows:

(Mail add.—Not for dely.)

Consigned to order of the John Jones Company. Destination, Union City, Indiana; notify Richard Roe Manufacturing Co.,———— Saratoga, Ind. At Union City, Indiana.

When bill of lading was presented, freight agent was advised the words, "Saratoga, Indiana," were out of order and would not accept bill of lading unless changed, being advised that you cannot bill shipment to one point, notify at another. The writer is very well acquainted with the fact that you cannot bill to one place notify at another, but we did not do that in this case; we simply put the business address of the concern who bought the material on the bill of lading.

The circumstances are (and they are not uncommon) the

firm that bought the material does a contracting business, and their home office was at Saratoga, Ind., but they wanted the material shipped to the town of Union City.

Answer: It appears that the order consignment instructions were that the Richard Roe Manufacturing Company at Union City, Ind., was to be notified; that this point was the same as the point to which the shipment was billed, and that the order bill contained a notice to the effect that the mail address at Saratoga, Ind., was not for the purpose of delivery at that point. In these circumstances, we see nothing irregular in the shipping instructions given the carriers, and are of the opinion that the carrier was in error in refusing to accept the shipment for transportation.

### Liability of Switching Line for Injury Through Defective Car

**Texas.**—Question: Will you inform us through the columns of your issue what carrier to file claim against on a loss of this nature occurring on a switch movement?

We load car at our plant on track of carrier "X" and had same switched to consignee on track of carrier "Y"; we issued bill of lading and prepaid the switching charge to carrier "X"; this movement was a city switch moving wholly within the switching limits of city; we notified carrier "X" of this damage; they inspected same and notified us that they would not accept our claim for damage account their investigation developed that this damage occurred on track of carrier "Y"; this damage was caused by car having leaky roof.

We loaded this car without having same inspected by the mechanical inspector of the carrier and was not furnished with an inspection tag O. K. for grain loading. It has been the habit of the carrier of late to request us to surrender with our billing this inspection tag O. K. for grain loading, or else make notation on bill of lading to the effect that "shipper assumes all liability for damage as caused by leaky roof." On this car we received a clear bill of lading without any notation to the effect that we assume all liability account leaky roof, even though we did not surrender inspection tag with our billing.

Answer: If carrier "X" furnished you with a defective car, which defect was not patent to you through a casual inspection of the car, and the loss or damage to the shipment resulted from such defect, then carrier "X" is liable, no matter where the damage actually occurred, and whether or not it was the initial carrier. In such a case the defective condition of car was the proximate cause of the injury resulting.

In addition, we understand that carrier "X" actually issued to you a bill of lading for the shipment switched by it to carrier "Y," and in that circumstance it is liable under the Carmack amendment, which makes the initial carrier liable for loss or injury occurring on the rails of its connecting lines.

### Is Decoration Day a Legal Holiday in Texas?

In this column in the October 2 number we replied to a Kansas correspondent that May 30, Decoration Day, was a legal holiday in the state of Texas. This answer was made in accordance with advice from the Secretary of State of Texas. Another correspondent took exception to this statement and wrote to the Secretary of State of Texas, receiving in reply this letter from Edwin Spencer, chief clerk to C. D. Nims, Secretary of State of Texas.

> Replying to your letter of October 19 enclosing copy of yours of October 7, will advise that I am unable to find where there is any law in this state designating May 30 as Decoration Day, although it has been in the past few years quite generally observed. I know that May 30 is designated by federal statute as a national holiday by reason of which national banks and the postoffices close on account of it. I presume that state banks close on that day by common consent on account of national banks closing, and since the European war the observance of national Decoration Day has become more common in the South without the enactment of any state legislation.

The letter to the Texas Secretary of State to which Mr. Spencer replied as above was as follows:

> The attached, as indicated, was copied from "The Traffic World" of October 2, 1920.
>
> As it has been stated "May 30, Decoration Day," according to advice from you, is a legal holiday in Texas, may I ask you to refer me to the authority on which you relied for the advice represented as received from you?
>
> According to my information, "Decoration Day," was by act of Congress approved August 1, 1888, made a legal holiday, within the District of Columbia, and its observance, as such, in the various states, as in the case of other holidays, is a matter for their own determination.
>
> So far as I am informed, the latest legislative enactment, concerning legal holidays in this state, was by amendment of Article 2939 of the Revised Statutes, to provide for the observance as such, on the twelfth day of October of each year, of "Columbus Day," and it was passed by the Thirty-second Legislature in regular session, A. D. 1911. The amended article did not name "May 30, Decoration Day," as a legal holiday, and I hardly believe in the past it has been so appointed pursuant to provision of the statute as follows:
>
> "* * * and all days appointed by the President of the United States or by the Governor, as days of fasting or thanksgiving, and every day on which an election is held throughout the State, are declared holidays. * * *"
>
> If by subsequent legislation "Decoration Day" was provided, I am not informed of the fact. Any information on this subject will be appreciated.

In this connection the Guaranty Trust Company of New York publishes a pamphlet, entitled "Bank and Public Holidays Throughout the World," and in the 1920 issue thereof, "Decoration Day" is not named as a legal holiday in Texas, nor is it so named by the "Standard" dictionary.

### Papers Necessary to Support Claims

**Iowa.**—Question: In the matter of loss and damage claims against the railroad companies, we would like to inquire if, under any ruling issued by the Interstate Commerce Commission, the consignee is compelled, in filing claims as above, to turn over with the claim papers the original bill of lading covering the shipment on which the claim arises.

The railroad companies are demanding that we furnish these bills of lading with the claim papers, and, for a period, we complied with their request, but found to our annoyance that in some cases they lost the entire set of claim papers, while in other cases they declined to pay the claims and only after several requests requiring several weeks could we get the claim papers returned to us, which it was necessary that we have before bringing suit for the collection of same.

Inasmuch as the handling of these claim papers by the railroad company passes through a great number of clerks, and sometimes through local and outside agents, they are very liable to be lost, in which case we would have no bona fide support to action at law, and hence we have recently been refusing to turn over our bills of lading.

Answer: The standard form for presentation of loss and damage claims against the carriers, which has received the approval of the Interstate Commerce Commission, National Industrial Traffic League and National Association of Railway Commissioners, requires that the original bill of lading, if not previously surrendered to carrier, original paid freight bill, original invoice or certified copy, and other particulars obtainable in proof of loss or damage claimed, must be submitted in support of the claim. These requirements have been followed by the United States Railroad Administration with carriers under federal control, as will be found in its General Order No. 41, dated August 28, 1918. If any necessary document is lost or destroyed, claimant is requested to file a bond of indemnity to cover.

### Lawful Traffic Rate Must Be Paid

**Ohio.**—Question: Some time ago we purchased coke, which was shipped from Follansbee, W. Va. This coke was originally shipped to us via Pennsylvania Railroad and delivered by that company, the freight rate being \$2.70 a ton. The routing of this coke was changed by the shipper to B. & O. delivery, and, on account of this railroad not having any commodity tariff from that point, they are charging us a rate of \$3.30. They originally charged us \$2.70 and are now giving us due bills for the other 60 cents.

The fact that we presumed this rate to be the same as the rate on the Pennsylvania, and their freight bills showing the same rate, caused us to permit this delivery, which would have been corrected by us had we known that the rate was higher. Would this, in your opinion, constitute a sufficient reason for our refusing to pay this corrected rate, or is it possible that both roads should carry the shipment at the same rate, regardless of the fact that the one railroad does not show a rating in their tariff?

Answer: A shipper is charged with notice of the lawful tariff rate and, inasmuch as the higher rate applicable on shipments moving via the B. & O. Railroad is the lawfully published tariff rate, you cannot refuse to pay that rate on the shipments in question.

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## RAILWAY DEVELOPMENT MEETING

The semi-annual meeting of the American Railway Development Association, the membership of which is composed of the industrial, agricultural, immigration, publicity, real estate, and marketing representatives of the principal rail transportation systems of America, will be held at the Hotel La Salle, Chicago, November 11 and 12.

The business of this association is to study and determine the best methods of developing the territories covered by the member lines and the inherent possibilities of their respective regions; create new traffic through the locating of new industries; promote the settlement of unoccupied lands; improve agricultural conditions; aid farmers in marketing their products, and stimulate conditions generally.

During the war railroad development officials devoted much time and thought to increasing the production of food. Since the war this work has assumed a new importance.

The meeting will be largely confined to round-table discussions of the various business problems involved, the first place on the docket being reserved for the question of standardizing the developing work of the individual lines with a view to the elimination of waste, duplication and destructive competitive practices, increasing the efficiency of the work and broadening its possibilities.

H. O. Hartzell, manager of the commercial development department of the B. & O. Railroad, Baltimore, is president, and J. B. Lamson, agriculturist of the Burlington, is secretary-treasurer.

# The Open Forum

**A Department for the Discussion by Readers of THE TRAFFIC WORLD of Transportation Questions of Interest to Traffic Men**

## SHIPS ONLY FOR AMERICANS

Editor The Traffic World:

I would like to tender a few remarks in regard to a paragraph published on the front page of your Daily of October 26 (The Traffic World, Oct. 30, 1920, p. 826).

The item is entitled "Ships Only for Americans." Do not for one moment think that I am absolutely not in accord with this slogan, but many of us in New York are acquainted with the fact that Mr. Clegg, during the war, was located with the U. S. Shipping Board, and it is a self-evident fact that his opinion bore weight enough and was considered American enough at that time for his services to be considered thereon. The fact that he expects to become a citizen of the United States within a period of two months should certainly entitle him to the privilege of having allocated to his firm, ships which the board feels should be allocated to the various routes over which the Kerr line operates.

As a means of furthering the interests of the foreign commerce of the United States, there is one channel in which the efforts of the U. S. Shipping Board might be exercised which would do an inestimable amount of real good. That is having the steamer lines operating Shipping Board boats co-operate to their utmost ability with shippers and inland carriers. I am sorry to state that co-operation is not carried on to the extent that is possible, and while in some instances it is probable that the shippers on their part are not co-operating, at the same time I happen to have had some personal experiences along this line. In one instance, on a letter of credit expiring with the material placed aboard the ship and the record of this placement being in possession of the steamship line, they insisted that, before tendering bills of lading to cover the material, dock receipts be produced, regardless of any guaranty for indemnity or other guaranties that might be furnished.

While it is true in instances of this kind that the railroad might have a lien on the property for charges which they had failed to collect, at the same time some judgment should be used on the part of the steamship lines to take into consideration the class of shipper with whom they are dealing. There are other instances where material has been ordered to a ship in larger quantities than the ship is able to handle, thereby tying up the equipment of railroads to such an extent that they are not able to function properly.

If these details are closely watched by the lines operating American boats and if those lawful privileges and various courtesies which are extended by all foreign lines were extended by those lines calling themselves 100 per cent American, it will, without doubt, have the effect of furthering not only the foreign commerce of our United States but of furthering to the fullest extent the American merchant marine.

New York, N. Y., Oct. 27, 1920. J. A. MacMullen.

## EFFICIENT RAILROAD SERVICE

Editor The Traffic World:

Being, like everyone else connected in any way with traffic work, very much interested in the problem confronting the railroads of the country at this time to bring their service up to the required standard of efficiency, I cannot help but comment briefly on the article appearing in your October 23 issue by A. L. Bacarisse.

Is it not true that during the period of government control it was necessary to add a large number of inexperienced clerks in railroad offices in order to handle the vast volume of work previously done by the lesser number of more experienced help drafted into army service? At the conclusion of the war a large proportion of the old help is returning to railroad employment, leaving a surplus at hand. It is only a natural following that part, at least, of the excess would have to seek other employment.

The very noticeable improvement in service rendered by the railroads during the comparative short time since return to private control would indicate an earnest effort on the part of railroad management and employes to improve, in every possible way, the service we were receiving during unified control.

We must remember that a broken machine as unwieldy as the "American railroads" is not repaired in a few months, even though the material is at hand with which to repair it.

We should, I believe, stand solidly behind the railroads and assist in any way possible to put them back on a "service rendering basis," at least until it is proved that no betterment can come through the return to private control.

Going a little further, I would also like to say that there is no one, in my opinion, that could not, should the occasion arise, exert himself to a greater effort to accomplish more than has been done in the last few prosperous years. It is of paramount importance that during this period of readjustment each of us put a shoulder to the wheel with every ounce of strength we have in order to pull industry through this trying period.

B. M. Maxfield, Traffic Manager,
Knapp & Spencer Company.

Sioux City, Ia., Oct. 30, 1920.

## THE RATE INCREASE AND PRICES

Editor The Traffic World:

I have your publication of September 18 before me, and I am very much amused at the cut on page 531, under caption, "The rate increase and prices."

Suppose we apply this increase on a car of toothpicks, a car of matches, or a car of wooden butter-plates. What would the increase be on each toothpick, match, and wooden butter-plate?

It appears to me that this is a beautiful camouflage to work on the unsuspecting public, and I am surprised that a publication of your standing would promote this kind of propaganda.

It does seem to me that the proper analysis of this freight rate increase is fully set forth in the following tabulation:

| Calendar year. | Freight revenue of Class I roads, including Class I switching and terminal companies. | Population of United States (estimated). | Per capita family of three. |
|---|---|---|---|
| 1917 | $2,829,246,769 | 103,635,306 | 27.30x3—$ 81.90 |
| 1918 | 3,450,084,040 | 105,253,300 | 32.79x3— 98.37 |
| 1919 | 3,556,734,573 | 106,871,294 | 33.28x3— 99.84 |
| 1920 | 4,255,043,330 | 108,489,288 | 39.31x3— 117.93 |

There is no question but that every man, woman and child in the United States is called on to stand his portion of the increase.

This schedule is worked out for a family of three. You will note that in the year 1917 the freight per capita for a family of three was $81.90. For the year 1920 this was increased to $117.93.

If this does not correctly show the true status of this rate increase, there is something radically wrong with my reasoning.

F. A. Patrick & Co.,
E. A. Risdon, Traffic Director.

Duluth, Minn., Oct. 28, 1920.

We object to Mr. Risdon's statement that we are "promoting this kind of propaganda." We published the article in question as showing how some persons figured the freight rate increase, translated into commodity prices, just as we are publishing Mr. Risdon's letter as showing how he figures it. We are "promoting" neither the one nor the other. Certainly we cannot be accused of "promoting" both.—Editor The Traffic World.

## CLAIM PREVENTION

Editor The Traffic World:

Your recent issue contains the interesting information that the carriers are about to undertake a movement as indicated above.

This is, indeed, a move in the right direction and should be productive of much good.

We had a little experience in claim prevention which was so satisfactory that we like to mention it.

At one of our factories in the west we made shipments of grease in barrels, carloads. Nearly every shipment arrived at destination broken up and the grease spread all over the railroad right of way from shipping point to destination. Claims, of course—some paid, others declined. At this point we directed the factory to confer with the transportation department of the initial carriers and ask to be shown how cars should be loaded. This was done; cars were blocked and loaded as directed by the carriers and since then they have gone through without loss, to the satisfaction of our customers and profit to shipper and carriers.

While on the subject of loading grease and oil in barrels, it may be mentioned that some carriers allow loading barrels on the bilge, while others require loading on the heads. There is

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POSITION WANTED—By young man with twelve years' railroad and industrial traffic experience. At present employed as Traffic Manager by large milling concern. Thorough knowledge of freight rates, Interstate Commerce Commission rulings and procedure, milling in transit, rate adjustments, efficient handling of claims, etc. Best of references from present and past employers. Married. Address "M," The Traffic World, Chicago, Ill.

POSITION WANTED—Certified Traffic Manager available, experienced railroad, commercial: technical, legal, practical, record of achievement. Young, ambitious. Address E. E. D. 197, Traffic World, Chicago, Ill.

WANTED—Wish place for our Assistant Traffic Manager, account business retrenchment. Has fourteen years' railroad and industrial experience, eight with us. Recommend him man with unusual executive ability. Well versed all phases traffic work. Good organizer. Location, Middle West. Address A. T. H. 283, Traffic World, Chicago.

no uniformity and, inasmuch as shippers load carloads, the whole situation might be cleared by a full and fair discussion and an understanding as to the best methods.

The same thing applies to shipments of fish in barrels or casks, which frequently arrive with all the brine gone and the goods spoiled.

These losses are an economic waste and if proper loading and blocking can prevent them it will certainly prove an advantage.

Boston, Mass., Nov. 3, 1920. J. D. Hashagen.

## BRIBERY INVESTIGATION

*The Traffic World Washington Bureau*

The Commission has decided to make a formal inquiry into allegations that shippers, to procure preferential car supplies for the shipment of coal, bribed railroads, their agents and employes, and thereby violated the law. On November 3 it announced the institution of a formal docket, No. 11917, "In the Matter of the Distribution of Cars for Shipments of Coal in Interstate and Foreign Commerce."

In acting on this matter the Commission did not profess to have any information, but it has heard from various sources that statements have been made, which, if true, tend to show that the law has been violated in various ways—namely, that persons, firms and corporations have granted and given money and other things of value to common carriers and their agents, and to others, for the purpose of obtaining, and that said persons, firms and corporations have obtained, unjust discriminations in their favor and undue and unreasonable preferences and advantages from the common carriers and their agents.

This investigation is the outcome of allegations reported to have been made to the Department of Justice by an attorney for coal operators in northern West Virginia, and also of the talk there has been going on among shippers about paying fees of from $5 to $25 for having cars switched to or from their loading platforms.

The Commision for years has been trying to obtain definite information as to the bribery of yardmasters, trainmasters and other railroad officials that is supposed to be common. It has not had much success, but it hopes to obtain real information from some of the men who have been reported as having made definite declarations. The order instituting the inquiry is as follows:

The Commission having under consideration the subject matter covered by the above title, and having received information from various sources that statements have been made, which, if true, tend to show that the law has been violated in certain ways, namely: That certain persons, firms and corporations have offered, granted and given money and other things of value to common carriers and their agents, and to others, for the purpose of obtaining, and that said persons, firms and corporations have obtained, unjust discriminations in their favor, and undue and unreasonable preferences and advantages, from said common carriers and their agents, and from others, in connection with the distribution of cars for use, and which have been used, in making shipments of coal in interstate and foreign commerce; that by reason of the premises, certain other persons, firms and corporations have been unjustly discriminated against and subjected to undue prejudices and disadvantages, and that the aforesaid common carriers and their agents, and others, have solicited, accepted and received money and other things of value for the purpose and with the effect above set forth;

It is ordered, That a proceeding of inquiry and investigation be, and the same is hereby instituted into and concerning the several matters and things above mentioned and described, in order that the Commission may keep itself informed and that it may hereafter take such action concerning said matters and things as it may determine upon and consider necessary, proper, or appropriate.

It is further ordered, That this proceeding be set for hearing at such times and places, and that such persons be required to appear and testify or to produce books, documents and papers as the Commission may hereafter direct; and that the investigation be carried on in the meantime by such other means and methods as may be deemed appropriate, and,

It is further ordered, That a copy of this order be served upon such common carriers and others as the Commission may hereafter designate.

An early hearing on the inquiry into the reports about bribery is likely to be set by the Commission. Reports attributed to attorneys claiming to represent coal companies intimate crookedness on the part of employes of the Commission as well as of railroad agents and employes.

An attorney to whom such reports were credited in various newspapers has been reported, in answer to inquiries by The Traffic World, as being "out of the city" or "not in" his office every day since October 28. It is expected that he will be summoned by the Interstate Commerce Commission and will have an opportunity to shed light on a phase of its work in which it has not been able to make any appreciable progress, although it has been working on it for several years. Prior to the chronic congestion caused by the war there was no reason for the bribery of railroad agents or employes. While there were recurring periods of shortage, they did not last long enough to seriously threaten the business of shippers.

The inquiry, it is recognized, will have to be carefully conducted because, even if railroad employes did accept money, it is doubtful whether their acts could be shown to be the acts of the railroad companies or their responsible agents. But even if that obstacle were overcome, there would be a fundamental question to be settled before a criminal prosecution could be successful. It would be necessary for the government, as the prosecutor, to show an intent on the part of the shipper or the railroad man to procure or to give preference in car supply that would be a violation of the interstate commerce act.

While there is nothing in the order instituting the inquiry to indicate it, the fact is that the Commission is thinking of obtaining information that will enable it to recommend legislation that will make it an offense for a shipper to give or an employe of a railroad to receive any kind of present for any reason. For years it has been understood to be the practice of some shipper traffic managers to give presents to yardmasters, yard conductors and other employes of common carriers. That, however, is not a matter of record anywhere, so that if the Commission recommended a statute forbidding such practices it would be proceeding merely on an assumption that reports to that effect represented the facts.

The coal mining country is filled with reports about this, that or the other coal company carrying railroad employes on its pay rolls so as to obtain their good will, if not their active co-operation, in procuring a preferential car supply. They have come to the Commission and its employes by the dozen, but not in such form that they could be formally acknowledged and made the basis of action. The reports go so far as to indicate that payments of that kind have resulted in switches in cars so that the companies paying salaries to railroad employes obtained more than their share.

A report is that throughout the coal regions there have been two prices on nearly all coal. For delivery to Washington, for instance, to a public utility corporation, a newspaper man claims he was advised that he could have coal for $4.50 a ton for delivery as and when the railroads could deliver it, and $7 a ton for delivery under priority orders. The offer was said to have been made after the Commission revoked its service order making priority for public service corporations a mere matter of application by the delivering line. But that is only gossip. The man who asked for the quotation was not an agent of the public service corporation and it is not certain that the coal man who pretended to be giving quotations had any coal to sell or was authorized to sell coal for some other person.

## PER DIEM FOR SHORT LINES

*The Traffic World Washington Bureau*

In Finance Docket No. 67 the Commission authorizes trunk lines to accord to short lines in the period from March 1 to September 1 the same arrangements with respect to per diem as existed February 29. This is what the American Short Line Railroad Association asked at the recent hearing before the Commission and to which the trunk lines offered no objection. The effect of the decision is that the short lines will settle with the trunk lines for the six months guaranty period on a basis of sixty cents and reclaim an allowance of two days instead of 90 cents with no allowance for free time. At the end of federal control most of the trunk lines refused to allow free time and sought to collect 90 cents per diem. The Commission declined to determine what would be a reasonable practice as to per diem and free time after September 1, holding that the per diem for future was not within scope of this investigation.

Following is the report of the Commission in Finance Docket No. 67, In the Matter of Continuing in Force the Practices as to Per Diem Rates and Free Time Allowance which were in Effect Between Certain Short Line Carriers and Roads Under Federal Control at the End of the Federal Control Period:

During the period of federal control the Director General of Railroads established a per diem rental for foreign cars of 60 cents per car with a reclaim allowance of two days' free time, to roads 100 miles or less in length, commonly known as short lines. This arrangement continued in force between certain short line carriers and roads under federal control until the expiration of the federal control period. Since federal control ended most of the so-called trunk lines, which connect with short line railroads, have refused to allow two days' free time and have also sought to collect per diem charges of 90 cents per car.

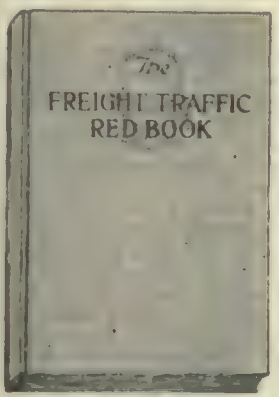
The matter having been brought to our attention by the American Short Line Railroad Association, an investigation was instituted by us and hearing held at which interested parties presented their views.

The short lines, through the American Short Line Railroad Association, urge that section 208, paragraphs (a) and (b) of the transportation act, 1920, prohibits the trunk lines from changing their practices during the period March 1 to September 1, 1920, hereinafter called the guaranty period, as to per diem and free time without the approval of the Commission in the absence of mutual agreement. They ask that the practices in effect in this respect on February 29, 1920, be continued during the guaranty period. The trunk lines represented by the Association of Railway Executives deny that they have violated the section of the transportation act referred to, but admit the reasonableness and equity of the short lines' claim.

Section 208, paragraphs (a) and (b), provides as follows:

"(a) All rates, fares and charges, and all classifications, regulations and practices, in anywise changing, affecting, or determining, any part or the aggregate of rates, fares or charges, or the value of the service rendered, which on February 29, 1920, are in effect on the lines of carriers subject to the Interstate Commerce Act, shall continue in force and effect until thereafter changed by state or federal authority, respectively, or pursuant to authority of law; but prior to September 1, 1920, no such rate, fare or charge shall be reduced, and no such classification, regulation or practice shall be changed in such manner as to reduce any such rate, fare or charge, unless such reduction or change is approved by the Commission.

"(b) All divisions of joint rates, fares or charges, which on Febru-

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ary 29, 1920, are in effect between the lines of carriers subject to the Interstate Commerce Act, shall continue in force and effect until thereafter changed by mutual agreement between the interested carriers or by state or federal authorities, respectively."

The short lines contend that the arrangements in effect at the end of federal control regarding free time and per diem is a "practice" within the meaning of section 208, paragraph (a), just quoted, and that the action of the trunk lines in abolishing the free time and in increasing the per diem is a change in "practice" within the inhibition of that section.

Section 208, paragraph (b), specifically deals with the relations between carriers and provides that all divisions of joint rates, fares or charges in effect on February 29, 1920, shall continue in force and effect until thereafter changed by mutual agreement between the interested carriers, or by state or federal authority, respectivly.

It is apparent that as between the carriers themselves the existing agreements or practices as to divisions of joint rates, fares and charges should not be changed during the guaranty period unless by mutual agreement of the carriers concerned or by direction of competent authority.

The term "divisions" as used in section 208 (b) has a settled meaning and under a strict construction of that section it might be said that in changing the per diem and free time arrangements in effect February 29, 1920, the trunk lines did not change or affect "divisions." While the change in the per diem and free time arrangements did not affect the measure of divisions as such, the action of the trunk lines in increasing the per diem and in reducing the free time did reduce the net revenue which the short lines would otherwise have received. As between most of the trunk lines per diem arrangements were changed by mutual agreement.

Without at this time deciding that section 208 (b) is broad enough to justify the view that it is an inhibition against the amendment of any practice which results in a reduction in net revenues, it seems to us apparent that it was the intention of Congress by section 208 (b) that carriers in general should be protected in revenues to be received from the public and that particular carriers would be assured of the same proportion of revenues for joint service during the guaranty period as were in effect on February 29, 1920. Moreover, it is conceded by the trunk line representatives that the claim of the short lines is reasonable and equitable. It is our view that it would be reasonable, proper and in accord with the spirit and intent of the act for the trunk lines to afford to the short lines during the guaranty period the same arrangements with respect to per diem and free time as existed on February 29, 1920.

Counsel for the short lines suggested that we also determine what would be a reasonable practice as to per diem and free time as between trunk lines and short lines after September 1, 1920. While under section 1, paragraph 14, of the interstate commerce act we have the power to determine the compensation to be made for the use of a car not owned by the carrier using it, that question is not within the scope of this investigation. Moreover, it could not be determined upon this record.

## SOME ELECTION RESULTS

*The Traffic World Washington Bureau*

An examination of the election returns conveys the impression that nothing was more effectively killed by the popular referendum than the Plumb plan for government ownership of the railroads and their operation by a corporation composed of the members of the railroad brotherhoods. The party that is technically responsible for the Esch-Cummins law (which is, however, not a partisan law) will have a large majority in the next Congress over the party, individual members of which gave the Plumb plan considerable support.

Except where Plumb and his coterie made speeches in favor of the bill introduced by Representative Sims, of Tennessee, who will not be a member of the next House, the plan was not an issue. That is to say, if it was discussed at all before the advent of the Plumb planner, it was mentioned with about as much seriousness as the weather.

Only Esch, of all the men directly responsible for the Esch-Cummins law, is among those who will not be a member of the next Congress. He was defeated for the nomination, largely through the influence of Senator La Follette, who, while nominally a member of the party technically responsible for the Esch-Cummins law, went down to defeat through the re-election of Senator Lenroot.

Even before the election there was talk that when Harding became president a graceful thing for him to do would be to offer Esch a place on the Interstate Commerce Commission. President Harding, according to present ideas, will have four vacancies to fill as soon as he comes into office, three of which will fall to members of his own party, and one to the opposition. The hostility of Senator La Follette might be aroused by such an appointment, but in view of the fact that La Follette is not in good odor with the members of the party of which he is nominally a member, that opposition might not be seriously regarded.

The returns show that the party technically responsible for the Esch-Cummins law will have a good majority in the Senate. At present it has a majority of two, with La Follette able to create a tie and give Vice-President Marshall the deciding vote on many important matters. With a larger majority the importance of keeping La Follette satisfied and in line has disappeared.

Equally as dead, the returns seem to say, is the McAdoo proposal, backed by Walker D. Hines and Commissioners Woolley and Eastman, for a continuance of government control for two or five years after the end of the war. That proposal was supposed to be dead when the railroads were returned. The fact, however, is that the law of August 29, 1916, is still in force. It authorizes the president, in time of war or threatened war, to take over the roads and operate them. There is still war, so that were the President so minded he could take possession of the railroads again, and operate them, until compelled to return them to their owners. Such a taking would be exactly like that of December 30, 1917.

The Plumb and McAdoo plans were hooked together because they were fundamentally in opposition to the return to private operation. McAdoo was not committed to government ownership with operation in accordance with the Plumb plan. The McAdoo plan was merely intended to keep the railroads from going back, so as to make possible an experiment with government operation under normal conditions.

No serious effort in behalf of the Plumb plan is expected either in the present Congress, which comes to an end on March 4, or in the next Congress, the first of which will probably be called early in March by President Harding. The present majority in the two houses of Congress will feel warranted, it is suggested, by the outcome of the elections, in tossing aside any proposals that may be made by the advocates of the Plumb plan, or by any of the railroad labor or other organizations for which Samuel Gompers is the official spokesman. The head of the American Federation of Labor, by taking sides in the election, under the rule of politics, is as much down and out as article X of the covenant of the League of Nations is supposed to be. Mr. Gompers drew the line on the party which is technically responsible for the Esch-Cummins law. He lost, and those who are responsible for that legislation won. The party now in power in Congress, and that will be in power in both the legislative and executive branches, after March 4, will not be beholden to Gompers or other labor leaders, in a political sense. Those who know the leaders in the two houses of Congress and the incoming President do not expect them, however, to exclude Gompers and other advocates of peculiar or class legislation from consultations, but merely to remember that in the matter of general principles, the country did not approve Mr. Gompers and the majority of his associates.

Any legislation with regard to transportation, it is suggested, therefore, will be along the lines of making the present law more emphatic, if possible, on the fundamental idea that the country is in favor of private ownership and operation, under strict governmental regulation and supervision. The campaign suggested only one possible amendment to the transportation law. That suggestion is contained in the speech Senator Harding made about the assigned car rule.

## CAR SURPLUS AND SHORTAGE

From information compiled by its car service division, the following summary of car surplusages and deferred car requisitions, indicating an average for the period October 1 to October 7, inclusive, with comparisons, is presented by the American Railway Association:

Total Surplusages—

| | |
|---|---|
| Average for period, Oct. 1 to Oct. 7, 1920 | 1,928 |
| Average for period, Sept. 1 to Sept. 7, 1920 | 769 |

It will be noted that there is an increase of 1,159 cars in the total average over the period Sept. 1 to Sept. 7, 1920.

Total Deferred Car Requisitions—

| | |
|---|---|
| Average for period, Oct. 1 to Oct. 7, 1920 | 75,336 |
| Average for period, Sept. 1 to Sept. 7, 1920 | 10,790 |

The total deferred car requisitions shows a decrease of 29,454 cars over the period, Sept. 1 to Sept. 7, 1920.

The average figures by classes of cars for the period, Oct 1 to Oct. 7, are as follows:

| Classes. | Surplusages. | Deferred car requisitions. |
|---|---|---|
| Box | 531 | 36,589 |
| Flat | 45 | 7,905 |
| Gondola | 780 | 26,778 |
| Miscellaneous | 572 | 4,064 |
| Total | 1,928 | 75,336 |

Deferred car requisitions amounted to 69,517 in the week ending October 15, as compared with 75,336 the preceding week, a reduction of 5,819 cars, according to reports from railroads to the car service division of the American Railway Association. Of the total shortage cars, 31,000 were box cars and 26,000 were coal cars.

Car accumulations for the week ending October 22 amounted to 39,807, of which 17,725 were in the export and coastwise trades. The number of cars held for reconsignment in the week ending October 22 was 2,572, that number being included in the total of 39,807. The accumulations in the week ending October 15 amounted to 43,616 cars.

### DELAWARE & HUDSON BONDS

Authority has been granted by the Commission to the Delaware & Hudson Company (Finance Docket No. 55) to issue $3,475,000 of first and refunding mortgage 4 per cent gold bonds, to be dated May 1, 1908, and to mature May 1, 1943; to pledge $1,700,000 of said bonds with the Secretary of the Treasury for a loan of $1,125,000 from the United States, and to hold $1,775,000 of said bonds in the treasury of the applicant for disposal as may hereafter be authorized. The loan from the government will be applied to additions and betterments of way and structures, estimated to cost $2,250,000.

# Miscellaneous Decisions

**Traffic Cases Recently Decided by State and Federal Courts**



### REGULATION OF COMMON CARRIERS

**Published Rates:**

(Circuit Court of Appeals, Third Circuit.) Where the filed and published tariffs of a railroad company specified a rate of $1.55 per ton for coal between two points, but contained a footnote stating that under the terms of a lease of a railroad line from a coal company "a lateral allowance is made out of the herein named rates" to such company on coal shipped by it, the amount of the allowance not being stated, and in practice the company was charged with the named rate against which the allowance was credited, the specified rate of $1.55 per ton held the duly established rate for coal, whether shipped by such company or others, a departure from which is unlawful, under the Elkins act (Comp. St. 8597, 8599), as amended by Hepburn act June 29, 1906.—Lehigh Coal & Navigation Co. vs. United States, 266 Fed Rept. 457.

**Actions:**

(Circuit Court of Appeals, First Circuit.) Actions against carriers while under federal control, authorized by federal control act March 21, 1918, 10 (Comp. St. 1918, Comp. St. Ann. Supp. 1919, 3115¾j), are not limited to such as arise out of a breach of some duty imposed on defendant as a common carrier.—Hines, Agent, vs. Sangstad S. S. Co. et al., 266 Fed. Rept. 502.

# Shipping Decisions

**Cases Recently Decided by State and Federal Courts**



**Carriers Under Federal Control:**

(Circuit Court of Appeals, First Circuit.) That federal control act March 21, 1918, 10 (Comp. St. 1918, Comp. St. Ann. Supp. 1919, 3115¾j), authorizing suits against carriers while under federal control, specifies only "actions at law and suits in equity" held not to have the effect of excluding suits in admiralty, especially in view of the construction placed on the provision by General Orders of Director-General No. 50 and transportation act February 28, 1920, both of which recognize such suits as within the intendment of the statute.—Hines, Agent, vs. Sangstad S. S. Co. et al., 266 Fed. Rept. 502.

**Damages:**

In a suit by a charterer for damage to the mast of the ship, necessitating repairs before her next voyage, libelant held entitled to allowance for time lost while they were being made, without deduction because it was time when she should have been dry-docked under the terms of the charter, where she was not, or because the time was utilized for making other minor repairs, which would not have necessitated laying her up.—Ibid.

**General Average:**

(District Court, S. D., New York.) Where a charterer issued to a shipper a clean bill of lading, which entitled him to have his cargo loaded below decks, but it was without his knowledge loaded on deck, and was jettisoned when the ship stranded, a provision of the bill of lading that general average was to be under the York-Antwerp rules, which specifically exclude jettisoned deck cargo from general average, held inoperative as against the charterer and also against the shipowner, where its master signed the bill of lading as required by the charter party, which also permitted the loading of deck cargo.—The Freda, 266 Fed. Rept. 551.

In a suit against a charterer for non-delivery of cargo, where recovery cannot be had on that ground, because the shipment was lost through an excepted peril of the seas, libelant may recover the amount to which he is entitled in general average, from which he was excluded through the fault of the charterer.—Ibid.

**Rates:**

(Superior Court of Delaware, New Castle.) Evidence that the rate for chartering similar vessels greatly exceeded the rate specified in the charter, and that the charterer did charter a smaller vessel at a greater rate than stated in the charter, held sufficient to prevent nonsuit for failure to prove damage by by breach of the contract to deliver the vessel under the terms of the charter, notwithstanding proof that the charterer had subchartered other vessels controlled by it during the same season.—Freiberg Lumber Co. vs. Rosalie Mahoney S. S. Corporation, 111 Atlantic Rept. 279.

**Damages by Fire:**

Where the chartered vessel was damaged by fire before the time for delivery under the charter, which excepted peril from fire, the owner is not liable for breach of the charter, if the vessel was wholly or partly destroyed, or if he made a reasonable investigation and ascertained that the cost of repairs would be such that a reasonable man would not make them, in view of the value of vessel when repaired.—Ibid.

Where a chartered vessel was damaged by an excepted peril before time for delivery under the charter, but not so as to prevent repair, it is the duty of the owner to repair the vessel and deliver it to the charterer within a reasonable time, though the time for delivery has already expired.—Ibid.

## SHIPPING BOARD APPOINTMENTS

*The Traffic World Washington Bureau*

Martin J. Gillen, attorney, of Racine, Wis., who was special assistant to John Barton Payne when the latter was chairman of the United States Shipping Board, has notified President Wilson that he will not accept appointment on the Shipping Board. Mr. Gillen is the third of the five men to whom were reported to have been offered places on the board to notify the White House that the place would not be accepted, the other two being Theodore Marburg of Baltimore and Gavin McNab of San Francisco.

The fact that Mr. McNab, Mr. Marburg and Mr. Gillen have notified the White House that they would not accept places on the board is taken to mean that they were asked by President Wilson to accept appointment and that the list of five names unofficially reported October 19 was correct. The other two reported appointees were Admiral Benson, the present chairman of the board, and Frederick I. Thompson of Mobile, Ala.

Joseph N. Teal of Portland, Ore., who represented the northwest lumber interests in the advanced rate case before the Interstate Commerce Commission, will accept a place on the board, according to White House officials and dispatches from Portland are to that effect.

It is understood that Commissioner Donald, now a member of the board, will accept reappointment and that President Wilson will name him. There is no question but that Admiral Benson will be reappointed. There will be seven members on the new board, not more than four of whom must come from one political party.

Governor Smith of New York, Darwin P. Kingsley, president of the Chamber of Commerce of New York, and W. F. Morgan, president of the Merchants' Association of New York, have appealed to President Wilson to appoint someone from New York as a member of the board. It was urged that, because of New York's "pre-eminence in commerce," not only local but national interests would be served by having a citizen of New York on the board. No specific candidate was urged for appointment.

## SHIPPING BOARD EXPENSES

*The Traffic World Washington Bureau*

Reduction of Shipping Board expenses is being effected wherever possible, according to Admiral Benson, chairman of the board. A total annual saving of $1,600,000 has been brought about in the comptroller's office and in the west coast offices of the board, he said, a reduction of $1,000,000 having been made by the comptroller and $600,000 by the Pacific coast department of the board.

R. D. Gatewood, director of the division of construction and repairs, has been sent to the Southern district to make a survey with a view of cutting down expenses there. Further reductions are also contemplated at Seattle.

Admiral Benson said the report showing the financial status of the board with respect to the operation of its vessels would be ready shortly and that he had been advised that it would show that the ships were not being operated at a loss.

The board has reached the conclusion that there is no market in the United States for the 192 wood ships which were built during the war and which are now anchored in the James River. Foreign offers for the ships will be given consideration with a view to sales as soon as the board has five members, Admiral Benson said. Under the merchant marine act, the board may not sell any of its vessels to foreigners unless such sales are approved by five members of the board.

Chairman Benson said it was costing the board about $100 a month a vessel to keep the wood ships in the James River in charge of caretakers. This means a monthly outlay, therefore, of approximately $19,200 a month, or $230,400 annually.

Because of stringent shipping laws and the high cost of insurance, Chairman Benson said it was practically impossible for Americans to operate the wood ships at a profit. He said the ships could be used to advantage, however, in European waters, and that one South American country had approached the board in regard to buying a number of the ships.

By stripping the vessels of the machinery in them, the chair-

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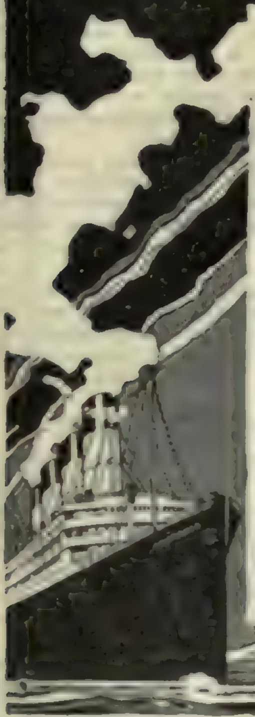

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man said, the boats could be transformed into barges for the movement of coal in the coastwise trade. He said he believed that that method constituted the only economical way of supplying New England with coal.

Referring to the operation of the board's steel vessels, of which there are more than 1,200, the chairman said only nine had been idle recently because of lack of cargoes, and that several of those had obtained cargoes October 28.

Discussing the board's operations generally, the chairman said it could not be compared with private operation because of the considerable amount of work that had to be done for the government, and that that phase of the matter had to be taken into consideration in determining whether the board was making or losing money on its fleet.

Admiral Benson characterized as "a disloyal citizen" anyone who criticized the board without having the facts to back up the criticism. He said he welcomed criticism based on facts and made with the intention of improving and upbuilding the American merchant marine, but that unfounded criticism struck at the merchant marine, the successful operation of which was most vital to every American citizen.

## BIDS FOR HOG ISLAND

*The Traffic World Washington Bureau*

Two bids of approximately $4,000,000 each for the Hog Island shipbuilding plant, which cost the government approximately $70,000,000, were rejected by Admiral Benson, chairman of the United States Shipping Board, October 3, as inadequate.

The Barde Brothers of New York submitted a flat bid of $4,000,000 and the New Jersey Machinery Exchange of Newark, N. J., submitted a bid of $4,268,750. It is understood the bidders offered to buy the plant on a "junk" basis—that is, for what they could get out of the material and equipment and not for the purpose of operating the plant.

Admiral Benson said the board hoped to realize at least $20,000,000 from the sale of the property.

Notice was served by Clarence W. De Knight of Washington, representing Frank M. Zeller of Philadelphia, of litigation in the courts of Pennsylvania affecting the title to the Hog Island real estate. Mr. Zeller is seeking a judgment giving him title to 63 acres of the waterfront of Hog Island.

There has been some talk to the effect that the Pennsylvania and Baltimore & Ohio railroad companies might buy the Hog Island plant for a huge railroad terminal. It is generally conceded the property would lend itself to such a use admirably. Admiral Benson has suggested that the plant be put to such use.

Admiral Benson announced that the Hog Island ship yard will be closed February 1 unless it is disposed of by that time. He attributed the failure to receive more than two bids on the plant to a tight money market and to the fact that the November election was at hand. He said several large business concerns were interested as prospective purchasers of the plant and that he anticipated that several other proposals for the purchase of the property would be submitted to the board.

## OCEAN WHEAT AND FLOUR RATES

*The Traffic World Washington Bureau*

The Shipping Board has received a number of protests against its ruling under which ocean freight rates on flour were placed on a basis of 5 cents per hundred pounds over rates on wheat.

The North Atlantic United Kingdom Freight Conference, composed of foreign lines, informed Admiral Benson, chairman of the board, that the decision would result in a grave injustice to them, and that flour could not be carried at the proposed rates without loss.

The Gulf Shipping Conference, composed of both Shipping Board and foreign operators, in a protest of the board's action, said five cents per hundred pounds would not cover the extra cost of "stevedore bill for loading and discharging;" that the decision made no allowance for time always lost in handling flour as compared with grain; that it made no allowance for incidental expenses or for claims that arise on flour; that it made no allowance for the fact that approximately 1,200 tons of wheat can be stored in the same space as 1,000 tons of flour; that it will create dissatisfaction among shippers of all sack goods who will claim the same treatment as accorded flour.

The protest sent by the foreign shipping lines to Admiral Benson was as follows:

"The attention of the members of this conference was drawn to the announcement of the United States Shipping Board in the newspapers of October 23 that, effective November 1, all Shipping Board operators were instructed to accept a rate on wheat flour of 5 cents per 100 pounds over the prevailing rate on wheat in bulk.

"In our opinion, this action on the part of the Shipping Board constitutes a grave injustice to the members of this conference, inasmuch as they were not consulted nor given an opportunity of expressing their opinion on so important a matter of such far-reaching consequences.

"You will recall that at your earnest request a working arrangement was entered into between conferences of Shipping Board operators and conferences representing foreign lines with a view to stabilizing and creating rates on all export commodities that would be fair to shippers and carriers alike, and this has been emphasized by the earnestness with which you have urged conferences among all operators, including those operating to French, Belgian, Dutch and German ports, but it must be obvious to you that the very object of these conferences is defeated by the summary action taken by you.

"The reduction of the wheat flour rate to 45 cents per 100 pounds is, we believe you will find, less than it actually costs to transport the commodity; in other words, it will not pay the cost of operation of the steamers trading in the North Atlantic. Therefore steamers carrying flour at these rates will make a loss on the transaction. This rate reduction further cannot fail to exert a downward influence on rates on other commodities, the extent of which cannot be immediately determined.

"We consider that the spirit of our understanding which we have scrupulously adhered to, even though some sacrifices were involved, has been violated and that without any opportunity to present our views we have been forced into a position where material financial losses are inevitable to steamers of both the Shipping Board and the foreign lines.

"Inasmuch as we are firmly of the opinion that your action in reducing the rate on flour is economically unsound, we ask you to give us some assurance that in future rate changes will not be made except in accordance with conference arrangements to which the Shipping Board and their operators are parties."

## INDEPENDENT SHIP OPERATION

*The Traffic World Washington Bureau*

"Almost complete independence of operation" of Shipping Board vessels by designated agents on whom will rest the responsibility for the expenses of operation as well as for gross earnings, is contemplated by the United States Shipping Board, according to a statement issued by Admiral Benson, chairman of the board, November 3, relative to the new agency contract between the board and the operators of its ships. (See Traffic World, Oct. 23, p. 756.)

The formulation and execution of such a plan, Chairman Benson indicated, would be the final step toward the establishment of a privately owned American merchant marine, the hope of the board, as expressed by the chairman, being that the "American people, led by these steamship managers," will buy the ships. The plan outlined by Chairman Benson resembles the bare boat charter plan being advocated by the American Steamship Owners' Association. Under the bare boat charter plan the board would lease ships to operators for a stipulated rental charge.

Admiral Benson's statement follows:

"The new agency agreement for the operation of the Shipping Board's fleet is the result of several months' exhaustive study by the standing committee on agents' agreement, composed of representatives of the board and of all the steamship associations of the country. It bears the unanimous recommendation of that committee, and, therefore, has the support and backing of the steamship men themselves—both owners and non-owners. On the recommendation of the steamship men the board, after most careful consideration, decided to make this agreement follow along the lines of the ordinary commercial agreement that has been in use for many years by private steamship owners for the management of their ships. Under this agreement the agent will get nothing at all if he lets a ship lie idle. His commissions being based on the freight collected, he must, in order to make anything, not only secure cargo for the ship, but secure it at the best possible freight rates and dispatch the ship quickly. There will be no money under this agreement for the manager who lets the vessel lie in port, or who loads her only a third full, or at rates that are too low. Full cargoes, so far as possible, the best freight rates obtainable, and quick turnarounds of the vessel on her voyages are the secret of success for both the manager and the Shipping Board under this agreement.

"For a time the board urged upon the standing committee a revised profit sharing plan—being a revision of the plan which has actually been in operation for some time and which has proved unsatisfactory. Any profit sharing plan, however, was finally discarded, and I think justly, when analysis shows that even the most efficient management of ships may not show profit in the immediate future, with ocean freight rates rapidly falling in the face of foreign competition, and that if there was risk of loss, it should be borne, not by the managers of the ships (provided they are efficient) but by the board, as part of the task entrusted to it by the American people of building up a permanent American merchant marine. Furthermore, any profit sharing plan greatly complicates the accounting, whereas the agreement now adopted has the great asset of simplicity. It is easily applied to all trades and all voyages. It fits every situation.

"It was made retroactive to March 1, 1920, because from

that date to the present the accounts with the board's ship managers have never been finally adjusted, and the compensation to the managers for their services commencing March 1 has been suspended pending the final adoption of this agreement. Of course, the agreement will not become effective between the board and any particular manager until it has been signed by the board and that manager. If, therefore, it should appear that in any particular case injustice would be done by making the agrement retroactive to March 1, that particular case will have to be handled upon its merits and such reservations and exceptions made as are deemed necessary.

"I can sum the whole matter up by saying that a long step forward has been taken in getting a simple agreement which makes the manager work for his compensation and rewards him when he does—an agreement which has the recommendation of the steamship men of the whole country who are to work under it and who are, therefore, responsible for its success. But this should not be a final stopping place. There should be further progress. With the assistance of these same steamship men the board now wants to commence the working out of a further plan whereby the manager will become responsible for the expenses of the vessel, as well as for her gross earnings, and where he will be gradually given almost complete independence of operation, and where, as a consequence, the board's personnel and overhead expenses, particularly in foreign ports, will be greatly reduced. When this can be brought about and the managers are operating the ships, freed from the board's supervision and assistance, independently, in stabilized trades, where the vessels have proved their value, then the American people, led by these steamship managers, will buy the ships, and a great desideratum—a privately owned American merchant marine—will be accomplished."

### SALE OF SHIPPING BOARD BOATS

The Shipping Board has sold two concrete tank steamers, the Palo Alto and the Peralta, each of 7,500 tons, to the Lincoln Steamship Line of New York. The Palo Alto brought $780,000 and the Peralta, $765,000. The Vaba, steel cargo steamer of 7,825 tons, has been sold to the Charbonneau Rajola Company of New York for $1,447,625.

### SALE OF SHIPYARD PLANT

The Shipping Board announced October 25 that it had sold the Fred T. Ley & Co. shipyard plant and material at Mobile, Ala., to H. A. Stone & Co., of Philadelphia, Pa., for $141,600. The terms of the sale were 20 per cent cash with the remainder to be paid in three installments in nine months.

## Personal Notes

Vance H. Williams is appointed traveling freight and passenger agent of the El Paso & Southwestern at Chicago. John J. Grogan and Frank E. Weaver are appointed contracting agents at Chicago.

E. W. Grice and R. H. Snead are appointed assistants to the president of the Chesapeake & Ohio Railway Company, with offices at Richmond, Va., and will continue to perform the same duties as heretofore. M. T. Spicer will continue as executive assistant to the president.

Samuel D. Snow, general attorney for the International Harvester Company, died in Chicago October 31. He was widely known in commerce work.

Charles Donnelly, executive vice-president, has been made president of the Northern Pacific to succeed J. M. Hannaford, retired.

## DOINGS OF THE TRAFFIC CLUBS

The Traffic Club of New England will hold its annual meeting December 14. The nominating committee has named Charles A. Anderson, general agent, Judson Forwarding Company, for president, and P. L. Stuart, New England agent, Great Lakes Transit Corporation, for secretary-treasurer. The club will stage a minstrel show Saturday night, November 20.

Carl R. Gray, president of the Union Pacific System, will address the Traffic Club of Chicago at luncheon at the Hotel Sherman next Tuesday on the subject, "The New Railroad Era." At this meeting there will be submitted to the members for adoption two resolutions—one for the creation of a company of national guard troops from among the Traffic Club members, their families and friends, and the other against any public adjustment board for the hearing of disputes between common carriers and their employes. Over 800 members of the club and their guests were present at the dinner the evening of election day at the La Salle Hotel and about 200 more joined them later to listen to the election returns, read in a disappointed manner by "Tom" Shea, chairman of the indoor entertainment committee. The committee also put on an excellent vaudeville program. The entertainment was one of the most successful ever given by the club.

The Transportation Club of Detroit opened its new quarters at the Hotel Tuller, November 1.

The first annual "railroad banquet" of the Transportation Club of Decatur, Ill., was held October 27. There were about 400 present. Vice-President J. F. Holden, of the Kansas City Southern, made an address. The toastmaster was A. D. Aiken, general agent of the C. R. I., and P. H. K. McEvoy, of the C. & A., entertained with feats of legerdemain. There were also some musical numbers.

The Traffic Club of Cleveland held its bi-monthly meeting October 27 at the Hotel Cleveland. There were about 250 present. The speakers were: F. E. Butterworth, A. G. F. A., Pere Marquette Railway System, Chicago; R. C. Griswold, director of sales, Cleveland Discount Company; Homer H. Johnson, attorney.

The Pittsburgh Unit of the Traffic Group of the National Dry Goods Association held its monthly meeting October 25. A constitution and by-laws were adopted and freight and express matters were discussed, after which adjournment was taken to November 16.

## CHANGE IN CLAIM DEPARTMENT

General Manager W. P. Bruce, of the Nashville, Chattanooga & St. Louis, has taken that road's freight claim prevention bureau away from the legal department and merged it with the safety department, the merged departments to be known as the Safety and Freight Claim Department. F. Whittemore is to be superintendent of the combined department.

Mr. Bruce's reason for making the transfer is contained in a notice issued in connection with the formal circular of merging and appointment of Mr. Whittemore, as follows:

"Owing to the steadily increasing amount paid out in settlement of claims for loss and damage to freight and the fact that the employes of the operating department alone have to do with the handling of freight from the time it is received until delivery is effected to consignees or connecting lines, the forces engaged in the work of freight claim prevention will, effective November 1, 1920, be transferred to the operating department and merged with the safety department.

"There will be employed in this branch of the operating department a number of inspectors whose duty it will be to inspect the loading and stacking of freight at depots, the handling of cars at terminals and on line of road and the condition of freight at junction points and destinations. It will also be the duty of these inspectors to report all instances of improper handling of freight at stations, as well as improper handling of cars in terminals and on the line of road.

"With the exercise of a reasonable amount of care and interest on the part of station and train employes, much of this damage and loss can be averted.

"The co-operation of all employes is expected in a determined effort to reduce to a minimum the loss and damage to freight."

## WORLD TRADE CLUB AT ST. LOUIS

(Commerce Reports)

The recent organization of the World Trade Club of St. Louis, with over 100 members, by the foreign-trade bureau of the chamber of commerce, the local representative of the United States Bureau of Foreign and Domestic Commerce, and export managers representing the largest exporting industries, is another indication of the interest being taken in foreign trade by manufacturers located in the interior cities.

The object of the club will be the promotion of foreign-trade interests of the city of St. Louis and the Mississippi Valley. It will work along the same lines as the Export Managers' Club of New York, the Exporters' Round Table of Boston, and the foreign-trade clubs of Chicago and San Francisco. Regular meetings will be held in the form of a round-table discussion in order that export managers may have an opportunity to discuss their problems and secure practical advice and assistance from members who have had experience along similar lines. From time to time authorities on certain phases of export trade will be brought to St. Louis to give the local men the benefit of their studies and experience.

The largest exporting firms and the various foreign-trade promotive agencies are represented on the executive committee in order to coordinate in one organization all industries and associations active in foreign trade. The officers of the club are: President, F. Ernest Cramer, chairman of the foreign-trade bureau of the chamber of commerce; first vice president, R. P. Block, export manager of the Shapleigh Hardware Co.; second vice president, W. E. Tarlton, export manager of the Brown Shoe Co.; third vice president, A. H. Boette, International Trading Co.; secretary and treasurer, J. A. Troy, secretary of the foreign-trade bureau of the chamber of commerce.

## TRIBUTE TO COMMISSION HEROES

*The Traffic World Washington Bureau*

A marble tablet in memory of the fourteen young men who left the employ of the Commission to enter the army in the World War and who lost their lives while in the military service, placed in the vestibule of the Commission's building in Washington, was unveiled Saturday afternoon, October 30, in the presence of the employes of the Commission. The dedicatory address was delivered by Commissioner Hall and the tablet was accepted on behalf of the Commission by Commissioner McChord, who acted in the place of Chairman Clark, who was indisposed. The funds for the tablet, engraved with the names of the fourteen young men who made the supreme sacrifice, were raised by the employes of the Commission, who are banded together in an organization known as the In-Com-Co Club, for whom Assistant Secretary Holmead acted in the ceremonies incident to the dedication.

Appropriate music was sung by a chorus of Commission employes who had been trained by Commissioner Aitchison, whose education included music to such a degree that he can act as a leader.

## SETTLEMENT WITH C. M. & ST. P.

*The Traffic World Washington Bureau*

The Railroad Administration has effected a final settlement with the Chicago, Milwaukee & St. Paul Railway Company whereby the government paid the company $13,750,000 in cash as balance on compensation. The Railroad Administration issued the following statement in regard to the settlement:

"The United States Railroad Administration reports a final settlement with the Chicago, Milwaukee & St. Paul Railway Company of all matters growing out of the twenty-six months of federal control. The adjustment was made as of the 1st day of November, 1920.

"The main differences in the mutual accounts, as between the Railroad Administration and the railway company, were in matters of maintenance of way and structures, equipment, depreciation and interest. Mutual concessions were made in an across table conference, resulting in the payment by the Railroad Administration to the railway company of $13,750,000 in cash, being balance due on compensation, after the adjustments agreed upon.

In connection with this settlement, $20,000,000 of indebtedness due the Railroad Administration from the railway company for additions and betterments was funded, in accordance with the transportation act, the debt due the Railroad Administration being secured by first mortgage bonds of the railway company deposited as collateral.

"The differences between the railway company and the Railroad Administration were ironed out in what might be termed a lump sum settlement. There was no agreement between the parties as to the construction of particular clauses of the standard contract."

## COAL PRODUCTION REPORT

*The Traffic World Washington Bureau*

"Production of soft coal continues above the 12,000,000-ton mark," the Geological Survey, Department of the Interior, says in its weekly report under date of October 30. "Preliminary estimates place the output during the week ended October 23 at 12,146,000 net tons, an increase of 45,000 tons over the revised figures (12,101,000) for the preceding week.

"For the third week in succession the output has thus exceeded 12,000,000 tons. Telegraphic reports of loadings on Monday, Tuesday and Wednesday of the present week (October 25-27) show an increase over the corresponding days of the week preceding and indicate that complete returns will again pass the 12,000,000 line. If this proves to be the case, the total output for the month will be the largest attained in any October of record, except in October of the war year 1918, and in the month of October, 1919, just before the great coal strike."

In the two-week period ending October 16, loss of possible output due to transportation and labor decreased somewhat, the Survey says, while at the same time the loss attributed to mine disability and other causes increased.

"A further increase marked the dumping of bituminous coal at Lake Erie ports during the week ended October 23, the report continues. "The total dumped is reported to the Geological Survey by the Ore & Coal Exchange at 1,138,217 tons, made up of 50,176 tons of vessel fuel and 1,088,041 tons of cargo coal. Except for the last week of August, this was the best performance of the year and came within 25,000 tons of the dumpings during the corresponding week of 1918.

"The cumulative Lake movement from the beginning of the season now stands at 18,962,000 net tons, as against 23,527,000 in 1917, 26,472,000 in 1918, and 21,423,000 in 1919. The year 1920 is therefore still behind its predecessors but is rapidly catching up with 1917 and 1919. In comparison with 1917 it is four and a half million tons behind; with 1918, seven and a half million tons, and with 1919, two and a half million tons.

"Congestion at Lake Erie ports continues. On Friday morning, October 29, there were on hand awaiting dumping, 11,088 cars, with an additional 6,016 cars due to arrive at port within the next 48 hours.

"The movement to tide continued in volume during the week ended October 26. Cars dumped over tidewater piers, as reported to the Geological Survey by the American Railroad Association, numbered 27,596. Dumpings increased at New York, Philadelphia, Hampton Roads, and Charleston. At Baltimore they fell somewhat short of the record set during the preceding week, when a total of 5,176 cars was handled.

"As reported to the Geological Survey by the Tidewater Bituminous Coal Statistical Bureau, dumpings at tide reached the high figure of 1,375,000 net tons during the week ended October 24. New England shipments still further declined, amounting to 194,000 tons, or at the rate of 830,000 per month. Exports also decreased somewhat, although the total of 664,000 tons represents a monthly rate of 2,840,000 tons. The most notable change was in the tonnage supplied as bunker coal, which increased from 177,000 to 250,000 tons, or 41 per cent, a change in part attributable to an increase in demand which seems to have accompanied the British coal strike.

"The all-rail movement to New England which had fallen off somewhat during the second week of October, recovered again in the week ended October 23. Cars forwarded through the five rail gateways of Harlem River, Maybrook, Albany, Rotterdam, and Mechanicsville, numbered 5,532. In comparison with 1919 this was an increase of 525 cars, or 9.5 per cent."

## CAR SERVICE COMMITTEES

Following is a new list of chairmen of the railroad car service committees, revised to November 1, 1920:

Atlanta, Ga.—E. W. Sandwich, Room 1114 Healey Bldg.
Baltimore, Md.—O. H. Hobbs, Room 517, B. & O. General Offices, Baltimore and Charles streets.
Birmingham, Ala.—W. J. Sullivan, Room 324 Chamber of Commerce Bldg.
Boston, Mass.—C. M. Conklin, care of F. E. Dewey, district manager, Car Service Division, Room 491 South Station.
Buffalo, N. Y.—L. G. Corcoran, Lehigh Valley Terminal.
Chicago, Ill.—J. J. Pelley, Room 510, La Salle Street Station.
Cincinnati, O.—J. A. Morris, Union Central Bldg.
Cleveland, O.—H. O. Dunkle, Room 419 Marion Bldg.
Columbus, O.—C. H. Brown, 320 Clinton street.
Dallas, Tex.—J. Munday, 808½ Commerce St.
Denver, Colo.—J. Russell, Room 329 Equitable Bldg.
Des Moines, Ia.—J. A. Wagner, care of General Manager, Des Moines Union R. R.
Detroit, Mich.—W. D. Trump, Railway Exchange Bldg.
Fort Worth, Tex.—R. L. May, care of Superintendent Transportation, F. W. & D. C. R. R.
Galveston, Tex.—D. R. Swain, Room 500 American National Insurance Bldg.
Grand Rapids, Mich.—W. M. Wardrop, care of General Superintendent, Pennsylvania R. R.
Indianapolis, Ind.—F. N. Reynolds, 615 Majestic Bldg.
Kansas City, Mo.—W. M. Corbett, Room 208, Union Station.
Louisville, Ky.—J. B. Arbegust, Room 205, Central Station.
Milwaukee, Wis.—J. W. Thiele, 520 Chamber of Commerce Bldg.
New Orleans, La.—J. M. Egan, Room 7, Terminal Passenger Station, Canal and Basin streets.
New York, N. Y.—A. J. Miller, 39 Cortlandt street.
Norfolk, Va.—C. L. Candler, Southern Ry. Bldg.
Omaha, Neb.—W. M. Jeffers, Room 305, Union Pacific Bldg.
Peoria, Ill.—R. H. Johnson, Union Station.
Philadelphia, Pa.—J. M. Jones, Room 511, Spring Garden Station, P. & R. R. R.
Pittsburgh, Pa.—C. F. Wolcott, Room 695, Union Arcade Bldg.
Portland, Ore.—B. E. Palmer, Room 715, Yeon Bldg.
St. Louis, Mo.—W. E. McGarry, Room 301 Union Station.
San Francisco, Cal.—K. M. Nicoles, Room 202, 64 Pine St.
Seattle, Wash.—J. H. O'Neill, Room 212, O.-W. Passenger Bldg.
Toledo, O.—A. B. Newell, Terminal Station.
St. Paul, Minn.—H. A. Kennedy, care of Minn. Transfer R. R. General Office.
Youngstown, O.—D. T. Murray, Room 809, Wick Building.
Washington, D. C.—E. V. King, Room 360, Terminal Station.

### CHICAGO SHIPPERS' CONFERENCE COMMITTEE

For some time plans have been on foot looking toward the forming of a shippers' organization in the Chicago district. A special committee of the Chicago Industrial Claim Conference was appointed to work out something definite, and as a result a Shippers' Conference Committee of the Chicago District, similar to the Shippers' Conference Committee of Greater New York, will be started. A meeting has been called to form a permanent organization, November 10, at 1:30 p. m., at the Traffic Club of Chicago. C. T. Bradford is chairman and W. J. M. Lahl, secretary of the organization committee.

### CARS FOR TEXAS & PACIFIC

The Commission, in an order in Finance Docket No. 71, has authorized J. L. Lancaster and Charles L. Wallace, receivers of the Texas & Pacific Railway Company, to issue $477,000 of 6 per cent receivers' equipment notes in part payment for 200 steel underframe Rogers ballast cars, 100,000 pounds capacity, contracted for in February, 1920, at a unit price of $3,178.68. The Commission said the applicants showed that the cars were needed to place "very large amounts of ballast material on the tracks of the Texas & Pacific Railway Company."

# Digest of New Complaints

No. 11885. West Kentucky Coal Bureau vs. Illinois Central et al.
Unjust, unreasonable and unduly prejudicial rates on coal from mines in western Kentucky on Illinois Central to destinations in Missouri and Arkansas. Asks for rates not more than 25 cents per ton higher than from mines in southern Illinois.

No. 11886. American Mineral Production Co., Valley, Wash., vs. Great Northern et al.
Unjust and unreasonable rates on magnesite rock from Valley to Irvin, Wash., between January 14, 1918, and September 30, 1918. Asks for reparation of $28,549.

No. 11887. The Upjohn Co., Kalamazoo, Mich., vs. Grand Trunk Western et al.
Unjust and unreasonable rates on 32 carloads of drugs from New York to Kalamazoo. Asks for reasonable rates and reparation of $2,276.

No. 11888. Chamber of Commerce of Gadsden, Ala., vs. Alabama Great Southern et al.
Unjust, unreasonable and unduly prejudicial class and commodity rates from Buffalo-Pittsburgh territory, Nashville, Chattanooga, C. F. A. territory and Ohio and Mississippi River crossings to Gadsden, Attalla and Alabama City, Ala. Asks for reasonable and non-discriminatory rates.

No. 11889. Port Arthur (Tex.) Chamber of Commerce and Shipping vs. Texarkana & Ft. Smith et al.
Violation of the third section of interstate commerce act by reason of refusal of defendant Texarkana & Ft. Smith to exchange business with Texas & New Orleans. Asks for order requiring such interchange.

No. 11890. Slogo Coal Co., Johnston City, Ill., vs. Mo. Pac. et al.
Alleges that the Mo. Pac. and other defendants refuse to publish through routes and joint rates from complainant's mines to destinations on C. B. & Q. Asks for establishment of joint through rates which shall not exceed those in effect on July 1, 1917, by more than 15 cents per ton plus advances under G. O. No. 28 and under Ex Parte 74.

No. 11891. Mississippi Valley Iron Co., St. Louis, vs. Mo. Pac. et al.
Unreasonable, exorbitant and prohibitory rates on pig iron between St. Louis, Mo., and Granite City, Madison and East St. Louis, Ill. Asks for rate exceeding 40 cents per gross pig iron ton of 2,268 pounds, minimum $8 per car and reparation.

No. 11892. U. S. War Department, Inland Waterways, Mississippi-Warrior Service, vs. Abilene & Sou. et al.
Unjust, unreasonable, unjustly discriminatory and unduly preferential requirements as to the payment of transfer, drayage, demurrage and per diem charges on traffic and cars interchanged between the boat lines of the complainant and the railroads of the defendants. Asks for just, reasonable and non-discriminatory charges and equitable rules.

No. 11893. U. S. War Department, Inland Waterways, Mississippi-Warrior Service, vs. Abilene & Sou. et al.
Unjust and unreasonable divisions, also inequitable and prejudicial of water-and-rail, rail-and-water and rail-water-and-rail rates. Asks that Commission establish just and reasonable divisions.

No. 11895. E. I. Du Pont de Nemours & Co. vs. J. B. Payne, as agent.
Unjust and unreasonable rates on crude anthracene from Youngstown, O., St. Louis, Mo., and Fallonsbee, W. Va., to Carney's Point, N. J., during February, March, April, May and June, 1919. Asks reparation of $1,292.93.

No. 11896. Houston (Tex.) Chamber of Commerce et al. vs. J. B. Payne, as agent, et al.
Unjust and unreasonable rates on gas masks from Camp Logan, Tex., to Chicago, Ill., in April, 1919. Asks reparation of $501.60.

No. 11897. Brooks Elevator Co., Minneapolis, vs. Ahnapee & Western et al.
Unjust, unduly preferential and prejudicial rates on black strap molasses from gulf ports to Minneapolis. Ask for reasonable rates and reparation.

No. 11899. Jonas & Naumburg, New York, vs. Michigan Central et al.
Against a rate of 87½c on 19 carloads of rabbit hides from Parkdale and Toronto, Ont., to New York as unjust and unreasonable. Ask for a rate not exceeding 42½c and reparation.

No. 11900. Armour & Co. et al., Chicago, vs. Chicago & Erie et al.
Unjust and unreasonable C. L. minimum of 22,000 pounds on live sheep and lambs in double deck cars. Ask for a minimum of 18,000 pounds and reparation amounting to $2,682.

No. 11901. L. A. Norris, Shreveport, La., vs. T. & P. et al.
Unjust and unreasonable rates and charges on oil well sppplies and pipes from Scottsville, Tex., to Mansfield, La. Ask for reasonable rates and reparation.

No. 11902. Beaumont Chamber of Commerce et al. vs. Beaumont, Sour Lake & Western et al.
Against rates on sugar running from 22.5c to 47c from points in Louisiana to Beaumont, Tex., as unjust and unreasonable and unduly prejudicial in favor of other Louisiana producing points. Ask for reparation to the basis of a rate of 21.5c previously in effect and reparation of $4,790.97.

No. 11903. McGregor-Noe Hardware Co., Springfield, Mo., vs. St. Louis-San Francisco.
Against the rates on iron and steel articles caused by the cancelation of the L. C. L. commodity rate recently effective. Ask for reasonable rates.

No. 11904. L. A. Meron, Albany, N. Y., vs. John Barton Payne, as agent.
Against the 6th class rate on sand and gravel from Booneville, N. Y., to McKeever, N. Y. Ask for rate of 80c per ton and reparation to that basis

No. 11905. Armour & Co., Chicago, vs. John Barton Payne, as agent.
Unjust and unreasonable rates on cocoanut and peanut oils from San Francisco and Oakland to Chicago. Ask for reasonable rates and reparation amounting to $14,885.

No. 11906. Hyre-Price Live Stock Commission Co. et al., Wichita, Kan., vs. M. K. & T. of Texas et al.
Unjust and unreasonable rates on live stock from points in Texas and Oklahoma to Wichita, Kan. Ask for reparation.

No. 11907. Cotto-Waxo Co. et al., St. Louis, Mo., vs. Ann Arbor et al.
Unjust, unreasonable, unjustly discriminatory, unduly preferntial or prejudicial rate on floor sweeping compound from St. Louis to points in eastern territory. Asks just and reasonable rates.

No. 11908. Hydraulic-Press Brick Co., St. Louis, Mo., vs. C. & E. I. et al.
Unjust and unreasonable rates on coal from the Clinton district in Indiana to Brazil, Ind. Asks just and reasonable rates and reparation.

No. 11909. Terminal Refining Co., by Mark Kirkpatrick, trustee in bankruptcy, Oklahoma City, Okla., vs. Oklahoma, New Mexico & Pacific et al.
Unjust, unreasonable, unjustly discriminatory, unduly prejudicial and unduly preferential rates on crude petroleum oil from points in the Burkburnett and Ranger groups to Wilson, Okla., because defendants applied rates of 22.5c and 25c per 100 lbs. from Burkburnett points and Ranger points, respectively, to Wilson, Okla., while maintaining rates of 19c and 21.5c to Ardmore, Okla. Asks for reparation in sum of $10,000.

No. 11910. James A. Coad, Sioux City, Ia., vs. Chicago, St. Paul, Minneapolis & Omaha et al.
Unjust, unreasonable and unjustly discriminatory rates on petroleum products between points in Oklahoma and Kansas to points in Iowa, South Dakota and Minnesota. Asks cease and desist order, just and reasonable rates and reparation.

No. 11911. General Electric Co., Schenectady, N. Y., vs. New York Central et al.
Unjust, unreasonable, unjustly discriminatory and unduly prejudicial rates on steam turbines from Schenectady, N. Y., to Seattle, Wash., in that defendants would not classify steam turbines as "turbines and parts thereof," under the heading, "Machinery and machines," but classified them as "marine turbine steam engines," and that the rate on steam engines should apply. Asks cease and desist order, application of rates applicable on "turbines and parts thereof," and reparatoin of $3,061.57.

No. 11912. Great Western Smelting and Refining Co., Chicago, vs. C. M. & St. P. et al.
Excessive and unreasonable and unjustly discriminatory rates on 250 cases of antimony shipped from Seattle, Wash., to Chicago, Ill., Aug. 13, 1918, in that rate of $2.59 per 100 lbs. exceeded $1 per 100 lbs. subsequently established on antimony products, and in comparison with rates on copper smelter products and bullion. Asks reparation in sum of $957.32.

## BOX CARS FOR GRAIN

*The Traffic World Washington Bureau*

"In view of the shortage of box cars for grain and grain products loading, it is manifest that every effort should be made to conserve cars suitable for that class of loading," the car service division of the American Railway Association says in Bulletin C. S. D.-3 to railroads.

"Reports occasionally come to this office of good grain car used for loading fertilizer, hides and other similar freight, thereby making the cars unsuitable for grain, flour and other commodities subject to damage by the odor remaining in the cars.

"There are so many freight cars suitable only for rough freight that there should be little difficulty in arranging distribution in such a way as to avoid the cause of complaints mentioned above."

### NORFOLK TARIFF SUSPENDED

The City of Norfolk, Va., which recently ventured into business as a common carrier, through its acquisition of a big quartermaster's dock, erected during the war, has had the experience of having its first tariff suspended. The Commission, October 30, suspended the City of Norfolk, Port Commission of Norfolk Municipal Terminals Tariff, Agent A. G. King's I. C. C. No. 1. The suspended schedule, filed to become effective on five days' time, carries rates for wharfage, storage and handling in and outbound export and import and coastwise freight, that are higher than rates for like service at the other docks and warehouses of the railroads that concur in Norfolk's tariff. The suspension was from November 1 to March 1.

### APPLICATION FOR ABANDONMENT

The Orangeburg Railway, of South Carolina, through C. E. Denniston, receiver, has applied to the Commission for permission to abandon its line of road from North, S. C., to Orangeburg, S. C. The applicant states that "No public interest will be materially affected by the proposed abandonment," as the country through which the road passes is sparsely settled and about 90 per cent of the traffic handled is competitive.

### TENNESSEE RAILROAD COMPANY EXTENSION

The Tennessee Railroad Company has applied to the Commission for authority to construct and operate a line of railway connecting with the applicant's main line at the mouth of Beech Fork of New River in Campbell County, Tennessee, and extending from six to eight miles up and along Beech Fork and the right-hand prong thereof, known as Rocky Ford, into Anderson County, Tennessee. The new line will reach coal and timber lands, the applicant states.

### EQUIPMENT BONDS FOR FLORIDA ROAD

The Moore Haven & Clewiston Railway Company, of Florida, has filed an application with the Commission asking for authority to issue $50,000 of first mortgage, 40-year 6 per cent gold bonds to raise funds for the construction and equipment of applicant's line of railway now under construction from Moore Haven, De Soto County, Fla., to Clewiston, Fla., a distance of about 13 miles.

### TEXAS SHORT LINE BONDS

The Texas Short Line Railway Company has filed an application with the Commission asking for authority to issue bonds to the extent of $175,000 to take up and discharge a like amount of bonds now outstanding against the applicant.

# Docket of the Commission

**Note. Items in the Docket marked with an asterisk (*) are new, having been added since the last issue of The Traffic World. Cancellations and postponements announced too late to show the change in this Docket will be noted elsewhere.**

**November 8**—Washington, D. C.—Examiner Barclay:
11567—The Order of United Commercial Travelers of America vs. The Pullman Company.

**November 8**—Portland, Ore.—Examiner Satterfield:
11701—Willapa Lumber Company et al. vs. Northern Pacific et al.

**November 8**—Los Angeles, Calif.—Examiner Eddy:
11677—California Fruit Growers' Exchange vs. C. & N. W. et al.
11812—Russell Bros. vs. Union Pacific et al.

**November 8**—Milwaukee, Wis.—Examiner Fleming:
11655—The Northwestern Leather Co. vs. Nor. Pac. et al.

**November 8**—New York, N. Y.—Examiner Woodward:
11801—Benjamin Marks and Morris H. Axelrod, trading as Marks & Axelrod, vs. N. Y., N. H. & H.

**November 8**—Monroe, La.—Examiner Gartner:
10966—Southern Carbon Co. vs. Ark. & La. Mid. et al.
11008—Same vs. Alabama & Vicksburg et al.
11246—Same vs. Same.
Portions of fourth sect. apps. 601, V. S. & P. Ry., and 632, F. A. Leland.

**November 9**—Austin, Tex.—Examiner Pattison:
11764—In the matter of intrastate rates and fares of the Gulf, Colorado & Santa Fe Ry. Co. and other carriers in the state of Texas.

**November 9**—Monroe, La.—Examiner Gartner:
11678—Millsaps Cotton Co. vs. Director General and Vicksburg, Shreveport & Pacific.
11679—Same vs. Vicksburg, Shreveport & Pacific et al.

**November 10**—Washington, D. C.—Examiner Oberlin:
* Finance Docket 83—In the matter of application of New Orleans, Texas & Mexico Ry. Co. for authority to issue promissory notes, to execute a certain contract for five locomotives, to issue first lien gold bonds, non-cumulative income bonds, and capital stock or voting trust certificates representing same; and to pledge certain of the bonds as security for a loan under section 210, Transportation Act, 1920, as amended.

**November 10**—Monroe, La.—Examiner Gartner:
11698—Parlor City Lumber Co. vs. Vicksburg, Shreveport & Pacific et al.

**November 10**—Philadelphia, Pa.—Examiner Woodward:
11760—Frank P. Miller Paper Co. et al. vs. Pa. et al.
11800—The Belber Trunk and Bag Co. vs. West Jersey & Seashore et al.

**November 10**—Portland, Ore.—Examiner Mattingly:
10128—Lumber carload minima.

**November 11**—Chicago, Ill.—Examiner Carter:
I. and S. 1220—Trackage charge on loaded cars.

**November 11**—Portland, Ore.—Examiner Mattingly:
I. and S. 1221—Absorption of switching charges at Coeur d'Alene.

**November 11**—Beaumont, Tex.—Examiner Pattison:
I. and S. 1216—Sulphur from Texas points to Beaumont and Port Arthur for export.

**November 11**—Indianapolis, Ind.—Examiner Disque:
11894—In the matter of rates, fares and charges applicable between points in the state of Indiana.

**November 12**—Natchez, Miss.—Examiner Gartner:
I. and S. 1228—Cancellation of rates from Natchez, Miss., and Vidalia, La., to Chicago.

**November 12**—Chicago, Ill.—Examiner Carter:
11785—K. C. Gaynor and E. S. Gaynor, doing business as Gaynor Brothers, vs. Director General and C. M. & St. P.

**November 12**—Boise, Idaho—Examiner Satterfield:
11666—S. J. Hawkins vs. Southern Pacific et al.

**November 12**—Washington, D. C.—Examiner Wagner:
11463—The Lehigh Valley Coal Co. vs. Director General.

**November 12**—Argument at Washington, D. C.:
* 11763—In the matter of intrastate passenger fares of the Chicago & Northwestern Ry. Co. and other carriers between points in the state of Wisconsin.

**November 13**—Dallas, Tex.—Examiner Pattison:
I. and S. 1222—Cotton from Oklahoma to eastern and Canadian points.

**November 15**—New Orleans, La.—Examiner Hartman:
* 8845—Natchez Chamber of Commerce vs. La. & Ark. et al.
* 8920—Same vs. Arkansas, Louisiana & Gulf et al.
* 9036—Same vs. Arkansas & Louisiana Midland et al.

**November 15**—Washington, D. C.—Examiner Money:
* I. and S. 1230—Wharfage handling and storage charges at municipal terminals, Norfolk, Va.

**November 15**—Helena, Mont.—Examiner Mattingly:
* 11860—In the matter of intrastate rates and fares of the Chicago, Burlington & Quincy R. R. Co. and other carriers in the state of Montana.

**November 15**—Washington, D. C.—Commissioner Woolley:
4844—In the matter of bills of lading (export bill of lading.)

**November 15**—Argument at Washington, D. C.:
9236—Oriental Textile Mills vs. Ala. & Vicks. et al.
Fourth Section Applications 60, 117, 221, 458, 484, 488, 540, 542, 601, 628, 703, 782, 792, 793, 794, 796, 789, 798, 799, 972, 1021, 1024, 1074, 1478, 1479, 1530, 1537, 1546, 1548, 1555, 1561, 1573, 1951, 1952, 2029, 2043, 2045, 2138, 2222, 3659, 3918, 3931, 4048, 4218, 4219, 4220, 4297, 4944, 4948 and 4964.
11052—Steel and Tube Co. of America et al. vs. Mich. Cent. et al.
10083—Whitewater Lumber Co. vs. Ala. Cent. Ry. et al.
10970—Interstate Cottonseed Crushers' Assn. vs. Ala. & Vicksburg et al.

**November 15**—San Francisco, Calif.—Examiner Eddy:
11669—Stewart-Warner Speedometer Corporation et al. vs. C. & N. W. et al.
11768—Albers Bros. Milling Co. vs. Director General.
11807—Frank P. Doe Lumber Co. vs. Sou. Pac. and Director General.

**November 15**—Denver, Colo.—Examiner Satterfield:
11786—The Midwest Refining Co. vs. Director General.

**November 16**—Boise, Idaho—Examiner Brown:
11406—State of Idaho ex rel. Public Utilities Commission of the State of Idaho vs. Nor. Pac. Ry. et al.

**November 16**—Argument at Washington, D. C.:
10422—Lehigh Portland Cement Co. vs. Midland Continental et al.
10815—Spring Valley Coal Co. et al. vs. A. T. & S. F. et al.
I. and S. 1201—Petroleum oil and petroleum oil products from points in Kansas, Oklahoma and Missouri to Chicago, Ill., Milwaukee, Wis., and related points.

**November 16**—Washington, D. C.—Examiner Money:
* I. and S. 1231—Dumping, skidding, trimming and leveling coal and coke at Virginia ports.

**November 16**—San Francisco, Cal.—Examiner Eddy:
11845—Growers' Rice Milling Co. vs. Director General.
11853—C. S. Maltby vs. Director General and Sumpter Valley.
11858—Crown Willamette Paper Co. vs. Willamette Navigation Co. et al.
11858 (Sub. No. 1)—Same vs. Same.

**November 17**—Argument at Washington, D. C.:
10892—Railroad Commissioners, State of Florida, vs. Aberdeen & Rockfish et al.
11130—Indian Packing Corporation vs. Ann Arbor et al.
10996—H. F. Watson Co. et al. vs. Alton & Southern et al.

**November 17**—Washington, D. C.—Examiner Money:
* I. and S. 1223—Class arbitraries to Sewall's Point, Va. (2).

**November 18**—Argument at Washington, D. C.:
11076—J. R. Wheeler Co. vs. Virginian et al.
11264—National Fireproofing Co. vs. Pa. et al.
11484—Dickinson Fuel Co. et al. vs. C. & O. et al.

**November 19**—Raleigh, N. C.—Examiner Healy:
11828—In the matter of intrastate fares and charges of the A. C. L. R. R. Co. and other carriers in the State of North Carolina.

**November 19**—Argument at Washington, D. C.:
10903—Oklahoma State Shippers' Assn. et al. vs. A. T. & S. F. et al.
11245—New Mexico Commission et al. vs. C. R. I. & P. et al.
Portion of Fourth Sect. App. 1046.

**November 20**—Argument at Washington, D. C.:
11233—Cincinnati Abattoir Co. vs. P. C. C. & St. L. et al.
10971—Little Fork Coal Co. vs. Eastern Kentucky et al.
11446—The Northern West Virginia Coal Operators' Assn. vs. Pa. et al.

**November 22**—Baton Rouge, La.—Examiner Brown:
11863—In the matter of intrastate rates, fares and charges of the Morgan's Louisiana & Texas R. R. & S. S. Co. and other carriers in the state of Louisiana.

**November 22**—Argument at Washington, D. C.:
11304—American Smelting and Refining Co. et al. vs. B. & O. et al.
11210—Chevrolet Motor Co. of California vs. C. R. I. & P. et al.
11274—Wharton Steel Co. vs. C. R. R. of N. J. and Director General.

### TRANS-MISSISSIPPI TERMINAL NOTES

The Trans-Mississippi Terminal Railroad Company, joined by the Texas & Pacific Railway Company and the Missouri Pacific Railroad Company and the receivers of the Texas & Pacific, has filed an application with the Commission to extend and guarantee $3,653,000 of 6 per cent gold notes of the Trans-Mississippi Terminal Company. Arrangements have been made with the holders of the notes, which have been extended once under an agreement by which the noteholders received 7 per cent instead of 6 per cent, whereby further extension will be made to November 1, 1923, the rate of interest to be 7½ per cent. The notes involved are part of an issue of July 1, 1914, made for the purpose of acquiring funds for the acquisition of property and construction of facilities at New Orleans. The Trans-Mississippi Terminal Railroad Company is the terminal company for the Texas & Pacific and the Missouri Pacific at New Orleans.

### FLAT CAR CIRCULAR CANCELLED

In Circular CSD-93 to railroads the car service division of the A. R. A. says:

"Effective this date, Circular CCS-45, issued June 23, 1920, asking that special attention be given to the distribution of flat cars for the protection of threshing machines, tractors and other farm machinery, is hereby cancelled."

### M. K. & T. OF TEXAS EQUIPMENT NOTES

C. E. Schaff, receiver of the Missouri, Kansas & Texas Railway Company, of Texas, by an order of the Commission in Finance Docket No. 62, has been authorized to issue $675,000 of receivers' equipment notes to aid the applicant to purchase three hundred 50-ton tank cars for the transportation of fuel oil. The total cost of the equipment will be $902,169, of which $227,169 wil be paid in cash. The notes will bear 6 per cent interest.

### HOURS OF SERVICE REPORT

The Commission has issued a statistical analysis of carriers' monthly hours of service reports covering all railroads which reported in the year ending June 30, 1920, instances in which employes were on duty for periods other than those provided by the federal hours of service act, together with a comparative summary covering the fiscal years ending June 30, 1916, 1917, 1918, 1919 and 1920.

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**THE TRAFFIC SERVICE CORPORATION**

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# The Traffic World

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A working tool for traffic men, both industrial and railroad; a national journal of transportation news; independent as between carrier and shipper

Vol. XXVI — SATURDAY, NOVEMBER 13, 1920 — No. 20



## PERISHABLE FREIGHT COMMITTEE DOCKET

Another has been added to the list of committees that publish their dockets in The Daily Traffic World and The Traffic Bulletin. This is the National Perishable Freight Committee. E. S. Briggs, chairman, announces that, hereafter, shippers will receive their advices of matters before this committee through this medium instead of through the former plan of furnishing dockets direct to individuals. The headquarters of the committee is in the Transportation Building, Chicago.

## CO-OPERATION THREATENED

The action taken by a number of representative shippers at a meeting in Chicago October 22 in preparing for the consideration of the National Industrial Traffic League a set of resolutions condemning, in no uncertain terms, the attitude of the carriers, demands immediate and serious consideration. It was inevitable that the recent rate advance—necessary as it was generally admitted to be—should cause dissatisfaction in some quarters as to specific matters involved and that there would be failure to reach agreement between shippers and carriers as to the proper solutions in certain instances. It was in recognition of this condition that the Interstate Commerce Commission, in its decision in the 1920 advanced rate case, used this language:

> The rates to be established on the basis hereinbefore approved must necessarily be subject to such readjustments as the facts may warrant. It is conceded by the carriers that readjustments will be necessary. It is expected that shippers will take these matters up in the first instance with the carriers and the latter will be expected to deal promptly and effectively herewith, to the end that necessary adjustments may be made in as many instances as practicable without appeal to us.

But failure to agree in individual controversial cases is one thing. What this conference of shippers charges is something else. It charges a general purpose on the part of carriers, by various means, to obtain still farther rate increases and, in short, with failure to meet them half way in the readjustments that the Commission predicted would be found necessary. In other words, the carriers are charged with greed, evincing itself in subterfuges to get more than was contemplated by the decision in Ex Parte 74.

If these charges are true—and both the National Industrial Traffic League and the carriers can determine whether or not they are true—then there ought to be action. If the carriers do not at once promise and evince real intention to change their attitude, then the action ought to come from the Traffic League, which, as the resolutions proposed point out, took a broad and generous position with respect to the application of the carriers for increased revenue and to the legislation which took form in the transportation act of 1920. And the Traffic League knows how to act forcibly. It is to be hoped that the carriers, if they feel themselves guilty, as charged, will not wait for condemnation and action by the League, but will permit wiser and better council to prevail among themselves at once. If the charges are not true, then we hope the League will find them unfounded and so announce to the public. The continuance of the era of co-operation between shippers and carriers that has been begun under the new legislation ought not to be permitted to be endangered either by failure of the railroads to recognize and correct their faults when they are pointed out, or by the failure of representative shippers to characterize as unwarranted attacks of a general character. There are two sides to everything and we trust the Traffic League will consider both deliberately before it acts next week. The situation calls for transportation statesmanship that the good ship, Co-operation, may not strike the rocks so early in its voyage. Is it too much to hope that representatives of the carriers will be present at the Traffic League meeting in New York either to deny the charges or to admit the ground for them and give promises of better conduct? More hangs in the balance than the mere desire to get one's disgruntled feelings off his chest or the natural desire to defend one's self when under attack.

## JURISDICTION OVER STATE RATES

It must have been somewhat of a blow to the members of state commissions, in convention in Washington, after all that has been said by them and their representatives in defense of their alleged rights to control rates in their respective states, regardless of the action

of the Interstate Commerce Commission in prescribing a level of rates to produce the revenue found by Congress in the transportation act to be necessary for the carriers, and after the speeches of their president, Mr. Shaw, and their general solicitor, Mr. Benton, assuring them that they were right and that they must fight the matter out on that line, to have Judge George W. Anderson, of the Federal Court, a former member of the Interstate Commerce Commission, come before them and, with a gentle wave of the hand, sweep aside all their fancied rights in this respect.

Judge Anderson seemed to assume that there could be little argument on this point. At least, what he had to say was spoken in no controversial manner but merely as a plain statement of fact. Said he:

> But, stated as a generalization, the gist of the new transportation act is the greatly increased recognition of our railroads as national and not as state agencies. While it cannot be said that there remains no such thing as intrastate commerce, yet, if the act is sustained as constitutional and enforced according to its obvious intent, there will remain very few intrastate rates or rates made as intrastate by state authority. Section 13 (4) in its broad condemnation of discrimination against interstate commerce, construed with the rest of the act, is intended to give to the Interstate Commerce Commission little less than full control over all rates, interstate and intrastate. This is the necessary, logical result of the national government's undertaking to finance the railroads as national highways and to provide service at cost. The fact that the service-at-cost theory remains muddled and confused with the impossible rate-group theory, does not destroy the validity of my assertion as to the essential nature of the new statute. If approximate equality of rates is found impracticable under this scheme, federal incorporation or other effective means of giving to the nation full rate-making power will follow. The day of any considerable control over rates by the states is nearly if not quite past. And rightly so; for, as noted above, our railroads are national, not state, highways in essential nature and function. Texas, New York, Illinois, must pay their fair share of the national transportation cost, state powers to the apparent contrary notwithstanding.

To be sure, Judge Anderson is not pleased with the plan of regulating intrastate rates by the Interstate Commerce Commission as at present constituted, though he realizes that that is what the transportation act means and that "the day of any considerable control over rates by the states is nearly, if not quite, past." To meet the situation arising from this abolition of the power of state agencies over railroad rates he advocates the federalization of state bodies with much the same functions as now possessed by the state commissions.

His plan is interesting. It would preserve the "local contact" which, by some, is thought so essential and which has been the argument for regional commissions, and would, perhaps, remove the bitterness of the opposition of state commissioners to exclusive federal control of rates. But we see no necessity for any such scheme. The idea of regional commissions has never appealed to us. The only possible good excuse for them would be the desirability of local contact, and this could be provided by enlarging the Commission or its organization of examiners. The only other reason that could be urged would be that of expediency—the plan would be throwing a sop to the state commissions. We see no merit in doing any such thing. If it is wise to take from the state commissions their control over state rates, in so far as that control comes in conflict with federal control, then it should be taken away. There will still be plenty for state commissions to do, not only with respect to other utilities, but with respect to the railroads themselves. The question is not one of making a job for a state commissioner or of saving his pride, but of regulating the railroads in the wisest and most efficient manner.

Though Mr. Shaw is offended by the statement that state commissioners, in their opposition to full federal control, are influenced by selfishness and says that anyone conveying that inference is merely showing how he himself would act and the motives that would govern him under similar circumstances, we say again that we cannot free ourselves of the impression that the concern of the state commissioners over the plan that would take from them some of their power, is basically selfish. It is perfectly human to be selfish and we are all more or less that way, but that does not alter the fact that selfish interest is not a good reason for an economic policy.

We have said before and we say again that irrespective of the question whether the state commissioners are correct as to their legal rights in this matter, they are wrong in raising the point at this time when to raise it may interfere with the working out of the plan that has been adopted for the rejuvenation of the railroads. If there were no way by which the state commissions might work to this plan without stultifying themselves, they might be held excusable for raising technicalities, but we have several times pointed out a method that might have been used, and California, by adopting it, has shown that the plan was not utterly foolish. The California commission, while emphatically reaffirming its opinion that "the powers of state authority over intrastate rates have not been nullified or reduced" by the transportation act of 1920, nevertheless recognizes the "practical necessity, under existing conditions, of adopting the Interstate Commerce Commission rates for intrastate rates." So it took the action necessary to be taken by all the state commissions, either voluntarily or under compulsion, if the plan of restoring the credit of the carriers is to be a success. There is no sacrifice of rights and no monkey wrench thrown into the machinery. And what may prove to be more important, from the point of view of the state commissioners, there has been no question here raised that may, in its solution, vex those same state commissioners. We commend the action of the California commission as business-like, patriotic and politically expedient.

## S. P. LOAN DENIED

*The Traffic World Washington Bureau*

On the ground that the showing of inability to obtain the money elsewhere was not convincing the Commission has denied the application of the Southern Pacific for a loan of $5,028,000 to be used by it in acquiring 51 new locomotives, 2,000 box cars, 1,000 flats, 1,000 stock, 500 automobile, 250 ballast and 55 caboose cars, at a total estimated cost og $17,232,600. The denial was based on the ground that the representations of the company that it could not procure the money elsewhere were not convincing. It was the first denial of that kind. Other denials have been on the ground that the prospective earning power of the companies was not great enough to warrant the loans.

The Commission, acting through Messrs. Meyer, Daniels, Eastman and Potter, said that since the end of federal control the company had borrowed only $15,000,000 by the sale of equipment trust certificates, "which is relatively unimportant," said the commissioners, "considering the value of the applicant's property, its available assets and its prospective earning power."

# Current Topics in Washington

**Anderson's Unification Ideas Viewed with Suspicion.**—Although Judge George W. Anderson's utterances in behalf of unification of the railroads, made to the convention of state commissioners, elicited applause and the convention gave him a vote of thanks, the indorsement of the general idea of further unification, in private, was not so flattering. Unification, to many of the state commissioners, seemed to mean federalization in the most obnoxious sense of that term—namely, government ownership and operation, even if camouflaged. Judge Anderson managed the production of the federal control law under which the things were done that caused Congress to enact the transportation law. In that statute the thing that caused the greatest popular notice was the provision that the railroads should go back to their owners on a day certain. The influence of both state and federal commissioners, regardless of their disagreements over the boundary between state and federal regulation, was for a termination of the era of "unified" control such as the ordinary opponent of government operation believes would result from tinkering with the present law in accordance with the Anderson idea. The Massachusetts judge, while he received courteous treatment, was thought of, by more than one of his auditors, as like a Greek bearing gifts. To them he represented the idea that was being discarded when the transportation law was enacted. While he may not be an advocate of the Plumb plan or anything else that would frankly lead to government ownership, the thought among opponents of the McAdoo way of operating the railroads is that he was so closely identified with the relegated regime that he and his ideas cannot be separated therefrom. A good many of the men who helped materially in the framing of the legislation now on trial are not afraid to be called reactionaries, especially since the fact has been shown, in more than one report, that return to private control and operation was followed, in such a comparatively short time, by new records for transportation, even in comparison with the best the era of government control can show as having been accomplished under the spur of war necessity. Some apologists for government control say the improvement is due to the return of experienced men. The fact that many of the experienced men who, in 1918, were in the army, have returned to their old jobs, it is believed, is more than offset by the poorer condition of the material. Anything that seems to be a squinting toward government operation, therefore, does not really get under the skins, in a beneficial sense, of the majority of those who have to do with the Interstate Commerce Commission or the state commissioners.

**Recognition, on the Commission, for the South.**—Commissioner Woolley's implication that the South may obtain as its reward for what Tennessee and Oklahoma did on November 2 in a reduction in its representation on the Commission recalls the fact that President Wilson was implored by southern senators, when Commissioners Eastman and Woolley were appointed, to choose a man from the heart of the South. In fact, some of the southern senators were represented by their friends as telling the President that, unless a real southern man was among those next named, there would be opposition from the South to confirmation. Members of the Southern Traffic League made representations, especially to Senator Smith of Georgia, to the effect that it was ridiculous for him and other southern senators to assent to nominations from the northern and border states year after year. They made the point that while Commissioners McChord and Woolley were from south of Mason and Dixon line, the greater part of Virginia, in a railroad sense, was in eastern territory and much of Kentucky was in the same division. They pointed out that, since the death of Judson C. Clements, no man from either the southeast or the southwest had had a seat on the bench of the national regulating body. President Wilson was urged, at one time, to appoint Theodore Brent from the South. He was at that time the traffic representative of New Orleans commercial interests. He was put on the Shipping Board, but quit it as a result of one of the periodical eruptions in that body. Since that time southern senators have tried to procure appointments for southern men, but without success. Whether they will have more success with a politically hostile President is one of the things that Senator Harding can answer, but probably will not until he is ready to announce his selections. There are many well-known traffic men in the South. Few know their politics, but on account of the prevailing political complexion of that part of the country the assumption has been that nearly all are not members—at least not permanent ones—of Senator Harding's party.

**In Defense of Admiral Benson.**—Admiral Benson's friends are greatly disturbed over the fact that practically no newspapers using the fact about the charges against the Shipping Board by the investigators employed by the Walsh committee took the trouble to point out that the Admiral has been chairman only since last March, and that the charges relate largely to practices prior to his coming. They hope to bring out that fact with distinctness when the Walsh committee takes the testimony in support of the charges. They also hope to point out that the Admiral has set his face against the practices prevalent prior to his coming that were made the subject of adverse criticism in such form that he could act on it. The fact that many of the evils of the cost-plus contract remained in the Shipping Board agreements long after the unadorned cost-plus contract was discarded, Admiral Benson's supporters are expected to suggest, is not a fact peculiar to the Shipping Board. In behalf of the Admiral (assuming that he needs a defense), it will be pointed out, if possible, that he helped get through Congress the Jones shipping law and has done yeoman service for getting a real foundation for an American merchant marine, for use as a substitute for the plain, out-and-out government ownership and operation foundation that was adopted as a war measure, without attempt to justify it on any other ground. It is also thought that probably the question will be raised as to whether the Admiral was expected to be the business man on the board, in view of the fact that his training is that of a sailor, presumably familiar with the technical side of ship operation. Inasmuch as there has been an almost constant procession of members of the Shipping Board, some coming in, and others going out, it is suggested that even if the charges are shown to be well founded, the task of placing the blame will be like that of apportioning censure for the quality of the broth spoiled by too many cooks.

**Miller, Governor-elect, a Rate Lawyer.**—Governor-elect Miller, it is believed, is one of the first lawyers familiar with the technical side of rate questions to be elected to executive office. He was one of the attorneys in the Solvay Process case. R. Walton Moore, elected to the House last spring and re-elected on November 2, was the first of the commerce attorneys, so far as can be recalled, to be elected to the legislative branch of the government. Moore devoted so many years to commerce law practice that he became a specialist in that branch of the law and few probably thought of him as a general practitioner at the bar in Virginia. He was better known in Washington for the work he did as commerce attorney for southeastern railroads. Politics have so little to do with rate questions that the man who specializes on the latter seldom becomes a specialist in politics. Moore was not. Governor-elect Miller, however, was more of a specialist in politics than in rate matters. In fact, he is hardly known among those who make their living telling railroads and shippers how to obey the interstate commerce act and still derive benefit therefrom.

**Plan for Shipping Road Materials.**—Ray G. Owens, vice-president of the Lakewood Engineering Company, which cut the ground from under a decision of the federal court in northern Ohio by bringing to the Commission the question of the proper classification of the sections of railroads used in the combat areas of Europe, has started a movement for having road building materials shipped in the fall and winter months, and stored at the points of consumption until time for their use in the spring and summer, as a method for relieving the demand for open-top equipment at other seasons of the year. He has sent out a series of five circular letters urging bankers, business men, contractors, railroad general freight agents, chief exectives of the railroads, and state and county engineers, to consider the matter and help along the proposition. His assumption is that there are periods in the fall and winter when the need for coal cars in the coal trade is not so great that road-making materials could not be hauled to the points of consumption so that road-making could start in the spring with a boom. His suggestion is that the economies of production resulting from the accumulation of materials in the fall and winter will more than offset the interest on the money tied up in the accumulated materials. He maintains that road-building is manufacturing and that any manufacturer will agree that he could not maintain his business on a profitable basis unless he provided materials well in advance of his production schedule. His argument is that the railroads and everybody concerned, especially the general public, would profit by such an arrangement of schedules for hauling road materials.

**Delays Between Election and Inauguration.**—At this time, about two weeks after election, it is taken as a moral certainty that the Shipping Board will continue to limp along with a short membership until the end of the Wilson administration, even if Joseph N. Teal and Frederick I. Thompson do come to Washington to take up the duties of the offices to which they have been appointed. The feeling is general that the Senate will not confirm any of President Wilson's appointees. The precedent set in 1912, when President Taft's last-hour appointments were held up, has produced a situation this year that has the effect

of lengthening the period recurring every four or eight years, in which the business of the government hesitates or almost stops on account of the uncertainty created, first, by the uncertainty of the voting outcome, and, second, when that uncertainty has been converted into a certainty that the people of the country have not approved the policy of the party in power. There has long been dissatisfaction with the fact that a Congress, unless called into extraordinary session, cannot begin legislating until thirteen months after the day it is chosen. The Congress elected November 2 last, in the ordinary routine, cannot begin carrying out the mandate it received from the voters on that day until the first Monday in December, 1921. President Harding, coming into office four months after his election, is expected to call that Congress together in extraordinary session in March or April. Had Governor Cox been chosen by a narrow margin on November 2 and at the same time a Republican Congress been elected, also by a narrow margin, the chances are that the present impassé would continue for a year longer. At the time this was written there was no sign of any greater co-operation with President Wilson, for the remaining months of his term of office, than there has been at any time during the last three years of his administration. Mr. Wilson did not co-operate closely with the leaders in Congress when his own party was in power, and the co-operation between him and the leaders in Congress since the Republicans took control in December, 1919, by means of a Congress elected thirteen months before, has not been discernible at all. There are some who hope that Republican leaders in the Senate can work out a plan whereby they will not extend a general hold-up to the Wilson appointees, because there is a feeling that there will be appointees to which the minority party will be entitled, to which no valid objection can be raised. For instance, there is Joseph N. Teal. As a traffic man, it is believed, there is not a Republican in the country, knowing anything about traffic, who would not be willing to certify that no better selection could be made. Yet if the hold-up of Wilson appointees is general, Teal will be among the rest. Mr. Thompson, the Mobile editor, is not known as an expert about any phase of traffic or transportation, so the same could not be said about him, but so far as now known in Washington, there is no objection to him other than that he was selected by President Wilson. On the other hand, it has been argued that the country repudiated President Wilson and all his works and workers. On that ground it has been argued that the Republican senators have the same reason for holding up his selections that the Democratic senators had for holding up the Taft appointees eight years ago. But, regardless of the political right or wrong of the matter, it is suggetsed, the country's business is left longer in an uncertain state, by reason of the quadrennial inquiry into the nation's affairs, than ever before.

A. E. H.

## RAILROADS UNDER PRIVATE CONTROL

Speaking before the Yale Alumni Association at Hartford, Conn., November 9, on "The Present Railroad Situation," Robert S. Binkerd, assistant to the chairman of the Association of Railway Executives, said:

"Six months of private operation of the railroads has shown that still, as of old, the instincts of rivalry and emulation, the chance for personal gain and advancement of the individual worker, and the chance for profit and the necessity for solvency on the part of management, are the keys which unlock men's energies and give zest and meaning to their accomplishments. For—to put it in a nutshell—six months of private operation of the railroads, by its increased efficiency, without the investment of an additional dollar, has added to the transportation capacity of the country the equivalent of approximately 600,000 freight cars, which, with necessary locomotives, would today cost something like two and one-half billion dollars.

"When the railroads were returned to their owners for operation each freight car in the country averaged 22.3 miles per day. On the first of September the average was 27.4, an increase of 5.1 miles. Each mile added to the average daily movement of the freight cars of the country produces the same transportation which would be produced by the addition of 100,000 cars averaging a mile less each day. The increase in the rapidity of car movement has therefore been equivalent to putting something like 510,000 additional cars upon the tracks of the country.

"When the railroads were returned to their owners the average load per car was 28.3 tons. On the first of September it was 29.8 tons, a gain of 1½ tons. Putting an additional ton into all the freight cars of the country is equivalent to adding about 60,000 additional cars.

"By increased rapidity of movement, therefore, the railroads have added something like the equivalent of 510,000 cars, and by heavier loading something like the equivalent of 90,000 cars, or a total of 600,000 cars, without any additional capital investment on which the public has to pay a return through rates.

"This extraordinary contribution to the rehabilitation of the country's economic situation has been attempted to be minimized by the statement that these six months of private operation have cost the taxpayers approximately $650,000,000, while 26 months of government operation cost only something over $900,000,000.

"While the figure of the cost of government operation is greatly understated, we will pass that over, the whole point of inquiry being whether or not the statement regarding the cost of the first six months of private operation is a fair and correct statement.

"Pending the results of a thorough analysis, I am not going to commit myself to exact figures. It will only be necessary to remind you of two things in order to show how untrue the statement is that private operation has cost the taxpayers of the country $650,000,000 for six months.

"In the first place, you will recall that there was a decision by the United States Railroad Labor Board, dated July 20, 1920, which granted increases in wages to railroad employes exceeding $600,000,000 per annum, which were retroactive the first of May. Approximately one-third of this increase for this year, therefore, is covered in the period between May 1 and September and must amount to approximately $200,000,000.

"In the second place, the railroad plant had considerably deteriorated due to its excessive service during the war period. This is not a criticism, but a plain statement of fact. Hundreds of thousands of tons of new rail and ballast and millions of new ties which under normal circumstances should have been in these railroads were not there. There had been an increase of 9 per cent in the number of unserviceable locomotives and 1.3 per cent in the number of unserviceable cars. And the mortality of cars was steadily increasing.

"If the country was to receive the amount and kind of transportation service which it urgently needed it was necessary to concentrate on maintenance with all possible speed. The monthly statements of the interstate Commerce Commission show that from March 1 to September 1 of this year the railroads expended approximately $175,000,000 more on maintenance of roadway and structures than was spent for the same purpose during the similar six months of last year; and that from March 1 to September 1 of this year they spent approximately $220,000,000 more on maintenance of equipment than was spent for the same purpose during the similar six months of last year. We, therefore, find that out of the alleged cost of $650,000,000 for six months of private operation substantially $200,000,000 was for wages increased through governmental agency, and that practically the entire remainder was consumed in larger expenditures for maintenance necessary to bring the transportation plant back more nearly to its pre-war condition of efficiency.

"In August of this year the railroads moved more freight than in any previous month in any year in the history of American railroad operation. July of this year was the biggest July movement ever known. And, from what we already know of the loading for September and October, it is already apparent that, barring some great accident, the year 1920 will be the record year in American railway operation. This record has been made with a somewhat deteriorated plant and an unusually high percentage of unserviceable cars. I submit that it constitutes one of the very best proofs that there is an initiative and enterprise in private operation under proper regulation which demonstrates it to be the superior method of providing the country with adequate and efficient transportation."

## INDIANA HARBOR BELT NOTES

*The Traffic World Washington Bureau*

Authority to issue, within sixty days, $2,200,000 worth of demand promissory notes, with interest not exceeding seven per cent, has been given the Indiana Harbor Belt road. The belt road is to pay the notes within two years of the issuance of the authority, out of its earnings, or out of the money paid to it by the government under the guaranty section of the transportation act.

In its application to the Commission the belt road said that more than $3,000,000 was owing it under section 209, but settlement has not been made so it could not pay traffic balances, per diems, pay rolls, war taxes, fuel bills, for ties and/or current expenses. The belt road proposed that the notes should be its individual obligations or notes endorsed by the proprietary roads, the New York Central, Michigan Central, the Milwaukee or the North Western. The Commission, in its report on Finance Docket No. 72, called attention to the fact that none of the roads mentioned has asked for authority to endorse the belt company's notes, so no action was taken by the Commission on that phase of the subject.

Inasmuch as the purpose of the issue is to supply funds for current uses, pending a settlement of the account between the government and the applicant under the guaranty section of the transportation law, the Commission made it a condition that the notes shall be paid two years from the date of the authorization, either out of earnings or out of the money the company expects to obtain from the government, "if the same shall be made within that time."

# Decisions of Interstate Commerce Commission

## MISROUTING OF LUMBER

Reparation has been awarded in No. 10979, McGowin Lumber & Export Company vs. Southern Railway et al., opinion No. 6441, 59 I. C. C., 238-40, on shipments of lumber from Vredenburgh Junction, Ala., consigned to Louisville and reconsigned to Brooklyn and Mt. Vernon, N. Y., the Commission holding that the shipments had been misrouted and overcharged.

The question involved in this case was similar to that with which the Commission dealt in Meeds Lumber Company vs. A. T. & N. et al., 59 I. C. C. 243. No joint rate applied over the route of movement. Charges were collected at the applicable combination rate of 41.8 cents, dividing 19 cents to Louisville and 22.8 cents beyond. The reconsigning instructions left the routing open beyond Louisville, except that the delivering carrier was designated. At the time of movement there was a joint rate of 31 cents applicable via Cincinnati, and the Virginia and Maryland gateways. The Cincinnati gateway was embargoed via some routes, but not via Louisville. The complainant contended that the defendants should have routed the shipments beyond Louisville via Cincinnati, applying the 31-cent rate. The Commission, with Commissioner Eastman dissenting, agreed with it, and ordered reparation.

## TIME ZONE INVESTIGATION

The Commission, in a report by Commissioner Aitchison, has declined to make a change in the boundary of the Pacific and mountain standard time zones prescribed by it in the original report (51 I. C. C. 273), denying the petition of the Public Utilities Commission of Idaho, considered in a reopened proceeding in No. 10122, Standard Time Zone Investigation, opinion No. 6445, 59 I. C. C. 249-52. The Idaho body asked that mountain time be prescribed for the whole of the Oregon Short Line in Idaho and the adjoining part of Oregon, east of Huntington. Modification of the line would have placed the whole of Idaho in the mountain zone. Substantially the whole of the southern part of the state is in the Pacific time zone.

Aitchison said that the testimony showed a desire for a time faster than mean solar time, exactly the contrary of the intention of Congress. Congress, he said, has provided a basis for standard time in the several zones and plainly evinced the intention that the mean solar time of the nearest time-governing meridian should govern at any particular locality so far as practical, having regard for the convenience of commerce and the existing junction and division points of interstate commerce carriers. He said substantially the same question had been raised by the Amarillo Chamber of Commerce. In disposing of that case the Commission announced its conclusion that it did not believe it to be within its discretion to adjust the zone boundaries with the avowed purpose of providing a community with slow or fast time, particularly as the intent of Congress had been unmistakably evidenced by a repeal of the daylight saving section of the act.

## RATE ON SESAME OIL

In a report on No. 10944, Magnolia Provision Co. vs. Houston & Texas Central et al., opinion No. 6437, 59 I. C. C. 228-9, the Commission has held unreasonable the application of the fourth class of $1.06 on two carloads of sesame oil shipped from Houston, Tex., to Chicago in October and November, 1917, to the extent that it exceeded a subsequently established rate of 43.5 cents. Reparation is to be made to the basis of that rate. The report also covers sub-number one, Same vs. I. & G. N. et al

## RATE ON CYPRESS IN NEW ORLEANS

An order of dismissal has been made in No. 10840, St. Bernard Cypress Co. vs. New Orleans & Northeastern et al., opinion No 6439, 59 I. C. C. 232-3, the Commission holding that a commodity rate of five cents on lumber from Chalmette to Seabrook, La., both within the corporate limits of New Orleans, was not unreasonable even when compared with a subsequently established per car rate of $6.50. Prior to June 25, 1918, the rate was four cents for ten miles or less. The twenty-five per cent increase brought it up to five cents. While Chalmette is within the switching limits of New Orleans, Seabrook is four miles outside, in the farming section of Orleans parish, with which the New Orleans city limits are co-extensive.

## RATE ON GASOLINE

A finding of unreasonableness and an award of reparation have been made in No. 11093, El Paso Chamber of Commerce vs. Oklahoma, New Mexico & Pacific et al., opinion No. 6436, 59 I. C. C. 226-7. The complaint was against a joint rate of 95 cents on gasoline from Wilson, Okla., to El Paso, Tex., on the ground that it exceeded the aggregate of intermediate rates. That aggregate was 58.5 cents. The shipments moved in July and August, 1918. In December of that year a joint rate of 44.5 cents was established. In accordance with the decision in Sunderland Oil Company vs. Director-General (55 I. C. C. 753), the 95-cent rate has been held unreasonable to the extent of its excess over the joint rate of 44.5 cents. Reparation is to be made to the Western Oil Company, for which the chamber of commerce filed the complaint, to the basis of the joint rate of 44.5 cents.

## RATES ON COAL IN ILLINOIS

A finding of unreasonableness as to the rates on coal from Matherwell to Hopewell, Ill., during federal control has been made in No. 10782, Alden Coal Co. vs. Rock Island Southern et al., opinion No. 6435, 59 I. C. C. 223-5, but reparation has been denied on the ground that the complainant is not the real party in interest. The rate on June 24, 1918, was 81 cents. The Rock Island Southern was taken under control but later released and operated under a so-called short line contract. The Burlington was under full federal control. The combination after June 24 was $1.36. The Commission ruled that that was unreasonable to the extent it exceeded $1 but denied reparation on the ground stated.

## REPARATION ON LUMBER

An award of reparation has been made in No. 10881, Meeds Lumber Company vs. Alabama, Tennessee & Northern et al., opinion No. 6443, 59 I. C. C., 243-5, on a holding that a carload of lumber from Charles, Ala., to Hollidaysburg, Pa., was misrouted and overcharged.

The complainant, in August, 1917, shipped a car from Charles, Ala., to Hollidaysburg, Pa., consigning it to Louisville, Ky., with direction to reconsign the shipment to Hollidaysburg. "Pennsylvania Railroad delivery preferred." The Southern Railway reconsigned the shipment via the Pan Handle and Pennsylvania Railroad beyond Pittsburgh. No joint rate applied over the route of movement but charges were collected at a rate of 38 cents, the basis for which did not appear. A combination rate of 37.5 cents, composed of 20 cents to Louisville and 17.5 cents beyond, was applicable over the route of movement.

But when the shipment moved, defendants maintained a joint commodity rate of 29 cents from Charles to Hollidaysburg applicable only via the Virginia and Potomac River gateways or Cincinnati, Ohio. Embargoes were in effect on lumber to eastern points routed through the Virginia and Potomac River gateways. Cincinnati was also embargoed when the shipment left Charles, Ala., the embargoed route being via the Cincinnati, New Orleans and Texas Pacific and Pan Handle. The Pan Handle embargo expired before the shipment arrived at Louisville. The governing tariff of the Southern permitted reconsignment on the basis of the through rate from the point of origin to final destination, provided the shipment moved over a route via which there was a joint through rate with established divisions. The defendants contended that no route via Louisville was shown in the tariff; that such a route would compel the Cincinnati, New Orleans & Texas Pacific to short-haul itself; that there were no divisions in effect over a route to Louisville, and that it was never intended that traffic should move to Cincinnati through Louisville on a rate applicable over the direct route to Cincinnati.

Answering that contention, the Commission said there was nothing in the tariff naming the joint through rate which would have precluded complainant from specifically routing the shipment through Louisville en route to Cincinnati, the gateway through which divisions were published, if it had billed the shipment to final destination in the first instance. It said that if it was the defendants' purpose to restrict the application to any particular route and the reconsigning privileges authorized in connection therewith to any particular point, it should have done so by clear and unequivocal language. The fact that there were no divisions through Louisville, the opinion said, was immaterial.

Commissioner Eastman, in a dissenting opinion, said it was not a reasonable construction of the tariff to hold that it applied to shipments crossing the Ohio River at Louisville and reaching Cincinnati in this round-about fashion with an out-of-line movement of 106 miles.

## RATE ON OLD STEEL RAILS

With Commissioner Aitchison dissenting, the Commission has denied reparation in No. 9185, West Virginia Rail Com-

pany vs. Pittsburgh, Cincinnati, Chicago & St. Louis, et al., opinion No. 6442, 59 I. C. C., 241-3, and dismissed the complaint which alleged that the complainant was damaged on numerous shipments of old steel rails from Pittsburgh, Pa., to Huntington, W. Va. The dismissal was based on what the Commission said was a lack of proof of damage.

This dismissal was made on a re-opened proceeding, the original report in which was made in 1918, 48 I. C. C., 675. In that report the Commission found that the defendants had not justified a rate of $2.42 per long ton on old steel rails from Pittsburgh to Huntington and that such rate was, and for the future would be unduly prejudicial to the extent that it exceeded, or might exceed, the rate of $2 contemporaneously in effect on new steel rails, in carloads, from and to the same points. The Commission refused to consider the claim for reparation because it appeared, from an exhibit filed after the hearing, that the shipments originated at points south and southwest of Pittsburgh and that the rates from the points of origin to Huntington were not in issue on such shipments.

In a supplemental report (53 I. C. C., 225) the Commission found that the rates from the four points of real origin of the rails were not unreasonable or unduly prejudicial.

Upon a second petition for further consideration, it was shown that while the shipments actually originated at points beyond Pittsburgh, their interstate transportation commenced at Pittsburgh, the rails having reached that point as Pennsylvania Railroad "company material." In this, the second supplemental report, the Commission, in effect, held that the transportation did begin at Pittsburgh and that it was legal within the terms of the commodities clause of the interstate commerce law. Having held that the transportation did really begin at Pittsburgh, the Commission said that the charging of a higher rate on old steel rails from Pittsburgh to Huntington than was charged on new rails resulted in undue prejudice to the complainant.

Although the complainant urged that it was damaged because in buying the old steel rails it expected to be accorded a $2.00 rate, then applicable on new rails, there was no damage to it in being forced to pay $2.42 a ton. The complainant, the decision said, knew that the legally applicable rate was $2.42 and in bidding both for the old rails and in selling the rerolled ones made therefrom it took into consideration the fact that the rate on old rails was higher than on new ones.

## RATE ON SASH, DOORS, MILLWORK, LUMBER

A finding of unreasonableness and an award of reparation have been made in No. 10730, El Paso Sash and Door Company vs. El Paso & Southwestern, et al., opinion No. 6440, 59 I. C. C., 234-7. The Commission condemned as unreasonable rates of 57 and 62 cents on sash, doors, millwork and lumber, from El Paso, Tex., to Ajo, Ariz. The 57-cent rate applied prior to June 25, 1918, and the higher rate, on and after that date.

The complainant alleged that the rates were unreasonable, unjustly discriminatory and unduly prejudicial. The Commission held them to be unreasonable, but not unjustly discriminatory or unduly prejudicial. It said that they were unreasonable to the extent that they exceeded 45 cents prior to June 25, 1918, and 50 cents after that date.

## CLASSIFICATION OF SCALES

Classification of scales or balances in accordance with the mechanical principle employed in their construction cannot be adopted because under such a description highest grades of scales or balances could be shipped at the same rate applied to the least expensive. The Commission thinks the carriers should give thought to the matter with a view to removing confusion prevailing in the application of the ratings now established. These views are expressed in a report showing why the Commission has dismissed No. 10685, Torsion Balance Company vs. Atchison, Topeka & Santa Fe et al., opinion No. 6434, 59 I. C. C. 218-23. In that complaint the scale company complained against the application of double first class on various types of its scales, moving in less than carload quantities, from Jersey City to San Francisco, as illegal, unreasonable, unjustly discriminatory and unduly prejudicial to the extent that the double first class exceeded the second class rating applied on other scales.

Western classification roads applied the double first class on what the complainant called "prescription balances" on the ground that they were pharmaceutical balances and that the other scales shipped by the complainant were laboratory scales. Pharmaceutical and laboratory scales, in western classification territory take double first class. The carriers admitted that some of the scales classified by them as laboratory or pharmaceutical scales were entitled to the second class rating, because, while they had high-sounding names, they were comparatively common scales in which the torsion principle was used, if they were packed separately, but double first class if packed with the higher grade scales.

The complainant contended that its so-called laboratory and prescription scales are used for ordinary commercial operations and are not true analytical laboratory or pharmacists' compounding scales, being used in industrial laboratories where the ordinary scales will not do, although the scales sold by it may be used for the ordinary operation of weighing goods sold over counters. The carriers contended that the term "laboratory," used without qualification, was intended to and does cover laboratory scales of all kinds, whether it be an analytical or industrial laboratory; and that the analytical scales mentioned by the complainant in contrasting its goods with the higher priced articles are articles to rate which freight classifications would have to use express bases.

The confusion was illustrated at the hearing when the complainant asked a witness for the railroads what the words "dispensing balance" meant to him. The witness said he did not get the significence of the term, but when it was explained to him that the scales were used in weighing goods sold over the counter, he said he was willing to give the complainant the benefit of the doubt and say that the second class rating should apply.

## NO DAMAGE, NO REPARATION

Adhering to the principle enunciated in the Oregon Fruit Company case (50 I. C. C., 719) and, if possible, emphasizing it, the Commission has dismissed No. 10885, Indian Refining Company, Inc., vs. Baltimore & Ohio, opinion No. 6444, 59 I. C. C. 246-8, the holding being that the legally applicable rate on gas oil from Lawrenceville, Ill., to Petersburg, Tenn., when the oil moved in June, 1919, was not unreasonable, although it was in violation of the fourth section, and it was so high at the time of the movement that it was reduced soon after the shipment on which the complaint was based moved.

Seventy-three cents was collected on the theory that that rate was applicable over the route of movement. The real rate was 72 cents. The shipment, therefore, was overcharged. The rate applicable over the route designated by the shipper was 70.5 cents. A rate of 59.5 cents applied to a more distant point and the carriers, at the hearing, expressed a willingness to make rates to intermediate points no higher than the rate to the more distant point. Since that time the rates have been readjusted so that the rate is now about 65 cents.

The decision again sets forth that in the "absence of proof of damage, the fact that the carriers have charged rates which contravene the long-and-short-haul rule of the fourth section of the act is not of itself a sufficient basis for an award of reparation." That follows a declaration that repeatedly the Commission has held that an award of reparation does not necessarily follow the reduction of a rate, whether the reduction is voluntary or on order of the Commission.

## AUTHORITY TO DEAL WITH NOTES

*The Traffic World Washington Bureau*

The Jacksonville (Fla.) Terminal Company, the joint facility of the railroads serving the Florida city, in finance Docket No. 1077, has asked the Commission for unusual authority to deal with its notes falling due on various dates during the next two years. It has asked for blanket authority to transfer and renew the notes, among the owners of the stock of the company, as they fall due during the two-year period, without further authority from the Commission, and, if necessary, to borrow $50,000 additional on its notes.

The total of the notes is $735,925, some of which have been outstanding for a long time and are payable on demand. They largely cover loans made to the company by the carrier companies, although some of them are obligations to the banks holding them. Some of them cover money paid out by the constituent stockholders for work or materials used by the terminal company. One item of $67,500, held by one of the Jacksonville banks, must be renewed every three months. The Commission recently authorized its renewal.

Authority to borrow $50,000 additional is requested so as to cover contingent expenses in the completion of the terminal. One pressing item is a note for $100,000 held by one of the Jacksonville banks, and due on November 18.

The Commission has sent a letter to the terminal company calling for additional information and an answer to the question whether the information it gave in connection with the renewal of the demand note for $67,500 was in substantial compliance with the rules of the Commission.

### RICHMOND TERMINAL NOTES

The Richmond Terminal Railway Company has filed an application with the Commission asking for authority to issue notes to the amount of $3,000,000 to retire outstanding notes aggregating $3,000,235. The odd amount of $235 will be paid in cash. Permission is also asked to issue two notes for $50,000 each to settle for interest accrued but not yet paid and to furnish a cash working fund to meet payments of pay rolls, miscellaneous accounts, etc.

# Tentative Reports of the Commission

## DEMURRAGE ON GRAPES

Adoption by the Commission, of a report on No. 11031, Schules Pure Grape Juice Co. vs. Central New England et al., made by Examiner Thomas M. Woodward would place the burden of heavy demurrage charges on many carloads of grapes held in refrigerator cars at Highland, N. Y., in the season of 1919, on the complainant. Woodward recommended the dismissal of the complaint on a holding that the demurrage and storage charges on dozens of cars held after the free time and after October 20, 1919, on which day an additional penalty of $10 a day was placed on those who held refrigerator cars beyond the free time, were not unreasonable.

Apparently the railroading done at that point was somewhat informal. Notices of the arrival of cars were given by telephone (although there was no written request by the consignee for the substitution of telephonic notice for the written, as provided in the tariffs) and cars were not delivered in all instances in the order in which directed by the complainant. It was admitted by the Central New England and West Shore, the two carriers involved, that the cars were bunched by them but the complainant made no request for relief in the form provided by the tariffs.

Most of the communications, apparently, were oral. The complainant also averred that the roads on the property of the Central New England were such as to impede the unloading of the cars in the wet weather that prevailed but no request for relief on that account was given in accordance with the tariff provisions.

The examiner came to the conclusion that the telephonic notices of arrival were sufficient because it had been the custom of the complainant and the railroads to do business that way. The railroads, in the fall of 1919, however, sent written notices as confirmation of the telephonic notices, two or three days after the arrival. Woodward said that it was apparent that the complainant was advised of the arrival of the cars.

In the fall of 1919, 189 cars arrived over the Central and about 115 cars over the West Shore. Such an unusual number had never before come to that station in any grape juice pressing season.

The trouble apparently was caused by the complainant's ordering of grapes for prompt shipment, in unusual quantity, on the theory that there was going to be a shortage of cars. No limit was placed on the brokers who did the buying for the complaining company. They were to forward the grapes as soon as they were ripe and they executed their orders so efficiently that there was not room for the refrigerator cars on the tracks of the two companies at Highland. While the grapes were arriving, building materials for the enlargement of the plant were also being received in cars, bottles were being shipped in, and jam was being sent out. In addition to the grapes by refrigerator, sixty or seventy loads by wagon were coming to the pressing plant.

Woodward's recommendation to the Commission is that it hold that the telephonic notices were sufficient; that the facilities of the railroad companies at Highland had not been shown to be inadequate; and that the penalty applied on the cars that were at Highland on October 20 or arrived thereafter. The last mentioned ruling would be in answer to a contention of the complainant that the $10 a day penalty did not apply on cars arriving before October 20, the day the penalty tariff became effective.

The complainant claimed it was railroad error for the Central New England to set cars in any order other than the order requested by the complainant and that demurrage should not be charged on cars not set in the order in which the complainant asked for them. The order was to set the cars in the order in which they arrived so as to minimize the amount of demurrage. Woodward said the Central's witness said that orders to set particular cars were observed and that all other cars were set according to the time of their arrival.

## DEMURRAGE ON LUMBER

It is the opinion of Examiner F. W. McM. Woodrow that the common-law principles as to the duty of a carrier to notify consignor that a shipment cannot be delivered to a consignee should not be imported into cases before the Commission. His view on that point is set forth in a tentative report on No. 11583, Hewitt-Lea-Funck Co. vs. Oregon-Washington Railroad and Navigation et al., the dismissal of which he recommended, on a holding that the demurrage charges at Eagle, Colo., on a carload of lumber from Sumner, Wash., were not unreasonable.

The shipment in question moved on an order notify bill of lading. The man to be notified was notified by telephone and the agent of the railroad company was in almost daily oral communication with him. He told the railroad agent that he expected to raise the money for the payment of the freight bill and the draft attached to the bill of lading in a few days. He did not succeed in his efforts. Finally, after the car had been on the track for a month, formal written notice was given to the order-notify consignee, dated November 11, 1918, which he received three days later. Nine days after the notice was received the lumber was sold and demurrage amounting to $210 was collected. Woodrow held that there was an undercharge of $110.

The complainant contended that the charges were illegal because collected for time antedating the formal notice. It also contended that, although the tariff did not provide for immediate notification in the event of a refusal of the shipment, where there was delay in the acceptance, the courts have recognized the justice of such a rule.

Woodrow said it was unnecessary to discuss the cases cited in support of that contention. He said that the cases generally support the view that at common law, where a common carrier was unable to deliver goods shipped to a consignee, it was its duty to exercise due diligence to notify the consignor within a reasonable time. Especially was this true in cases of "order-notify shipments," as the billing showed that the consignor did not desire to extend credit to the consignee.

"The Commission's jurisdiction," said Woodrow, "is limited by and derived from the acts of Congress regulating interstate and foreign commerce. The defendants are legally obligated to collect demurrage charges in accordance with the applicable tariff rules and regulations. The interpretation of the courts as to common-law liabilities should not, in this manner, be read into tariffs. If complainant has been damaged by reason of the breach of a common-law duty on the part of the carriers, the court is the forum."

## REPARATION ON COTTONSEED

Reparation has been recommended on a finding of unreasonableness in a tentative report on No. 11381, Empire Cotton Oil Co. vs. Chesterfield & Lancaster et al., made by Examiner Warren H. Wagner, on two carloads of cottonseed from Pageland, S. C., billed to Atlanta, but reconsigned to Mina, Ga. The billing to Atlanta was an error, the complainant intending it for its mill at Mina. A rate of $6.80 applied to Atlanta, but only $4.50 to Mina, seven miles east of Atlanta. Wagner recommended a finding that the $4.50 rate would not be unreasonable for the future.

## SODA ASH, FOR EXPORT

Examiner John A. McQuillan has recommended the dismissal of No. 11585, Harper, Marshall & Thompson Co., Inc., vs. Director-General as agent, on the ground that a rate of $1.26 on soda ash, carloads, from Painesville, O., to Seattle, for export, between July and November, 1918, was not unreasonable. On some shipments the charge was only $1.25. The examiner said the legally applicable rate was a combination of $1.26. In December, 1918, a joint rate of $1.25 was established and in April, 1919, an export rate of 60 cents was established. The complainant contended that the domestic rate was relatively unreasonable after July, 1918, because many export and import rates were restored in that month, but not so with regard to soda ash.

The Railroad Administration said it was not the intention, when export and import rates were canceled, to make a uniform percentage of rates, nor was there any desire to limit the increases when there was a restoration of the export and import rates. It was pointed out that the comparisons submitted by the complainant are not on articles in the same category as soda ash.

Restoration of export and import rates in July, 1918, the Railroad Administration lawers contended, was made in response to vigorous representations that the business of some shippers was ruined and that events since then have proved it was a mistake for the Railroad Administration to have restored the export and import rates.

When water transportation was restored from the Atlantic ports after the signing of the armistice, the carriers contended, there was justification for the cut of the rate on soda ash to 60 cents.

## RATE ON CRUDE DOLOMITE

In a tentative report on No. 11537, Pittsburgh Crucible Steel Co. vs. Pennsylvania Railroad Co. et al., Examiner Bronson Jewell has recommended a finding of unreasonableness and an

award of reparation as to a rate of $2.40 on crude dolomite, from a siding near Shocks Mills, Pa., to Midland, Pa., shipped in October and November, 1918. The rate was subsequently reduced to $1.90 a ton, which was the basis in effect from main-line points while the dolomite in question was moving from a branch line. Some of the carriers tried to defend on the ground that the movement was from branch-line points. The examiner said the testimony did not show any difference in traffic conditions warranting a higher charge from the branch-line points.

## RATE ON LIMESTONE

A recommendation that a rate of $2.20 per gross ton on limestone from Williamson, Pa., to Midland, Pa., be held to be unreasonable and that reparation be awarded, has been made by Examiner Bronson Jewell, in a report on No. 11539, Pittsburgh Crucible Steel Co. vs. Pennsylvania Railroad Co. et al. The railroads admitted that $2.20 was a paper rate on which there had been no movement prior to June, 1918, when 20 carloads were moved. Rates of $1.25 and $1.30 per gross ton were in effect from points near Williamson. After the movement the carriers established a commodity rate of $1.20, to which he recommends reparation.

## RATE ON GLASS SAND

An award of reparation is recommended by Examiner John T. Money in a tentative report on No. 11343, Odell-Daly Material Co. vs. A. T. & S. F. et al., on a holding that the legally applicable rate on glass sand from Guion, Ark., to Augusta, Kan., was unreasonable because in excess of the aggregate of the intermediate rates. Nineteen carloads were shipped in July, August and September, 1919. Seventeen moved over the St. Louis-San Francisco and the others over the Santa Fe. The charges on the Frisco shipments were 26.5 cents on a basis which Money said did not appear. The Santa Fe shipments moved on a combination of 16.5 cents. A joint class E rate of 28 cents was legally applicable, so there were undercharges outstanding at the time of the hearing. The aggregate of intermediates amounted to 13 cents. The examiner recommended reparation to that basis. The departure from the fourth section was unprotected by any application for relief. He also recommended the waiving of any and all undercharges.

## RATES ON ICE

A recommendation that reparation be made on 384 carloads of ice to the basis of subsequently established rates, has been made by Examiner Paul O. Carter in a tentative report on No. 11499, Consumers Ice Co. vs. Director-General, as agent. The traffic moved from points in Wisconsin and Minnesota to destinations in Iowa, Nebraska and North Dakota in February and March, 1919, during the ice famine. It moved on the paper rates because, usually, ice moves only for comparatively short distances, while in this case it moved 300 and 400 miles. The Railroad Administration, to meet the requirements caused by the famine, put into effect a basis of low commodity rates, and Carter thinks the carriers should make reparation on the shipments involved in this case to the basis of the subsequently established rates. Some of the rates were in excess of the aggregate of the intermediates.

## RATE ON PEANUT OIL

In a tentative report on No. 11422, Procter & Gamble Co. vs. Director-General, as agent, Examiner H. W. Archer recommended a holding that the sixth class rate of 54 cents on peanut oil from Suffolk, Va., to Macon, Ga., was unreasonable because in excess of the subsequently established rate of 32.5 cents, which was the rate in the reverse direction.

The Director-General's railroad assistants who handled the case said there should not be an award of damage because the complainants had not asked for a commodity rate until 54 days after the first movement in 1919 and there have been no movements since the establishment of the commodity rate.

Complainant contended that it was entitled to a reasonable rate regardless of whether it asked for a commodity rate on a vegetable oil because it is the duty of a carrier to maintain a full line of reasonable rates and that inasmuch as there was a crushing plant at Suffolk and a refinery at Macon it might suspect there would be movement between the two points southward as well as northward. The railroad men contended that there should be no reparation unless it was shown that the contract price at Suffolk plus the 54-cent rate to Macon exceeded the market price at Macon. Inasmuch as it was not disputed that the complainant made the shipments Archer said it was not necessary to discuss that contention so long as the law is as at present interpreted.

Archer recommended reparation to the basis of a rate of 36 cents, his idea being that 32.5 cents would be low.

## REPORT ON WASHINGTON WESTERN

A fourth report in the long-standing controversy between the Great Northern and Northern Pacific, on the one hand, and the Washington Western, one of the so-called tap lines which the Commission has been constrained to recognize as a common carrier, on the other, has been made by Attorney-examiner W. N. Brown. His report is a recommendation to the Commission, in No. 8167, Three Lakes Lumber Company et al. vs. Washington Western et al.

In his report Brown treats the Washington Western, controlled by the Three Lakes Lumber Company, as a common carrier and recommends that the rates on lumber and forest products from points on its rails to interstate destinations be held not to be or to have been unreasonable, but that the refusal of the trunk lines to maintain joint rates on the Pacific coast-group basis, from points on the Washington Western, while contemporaneously maintaining such coast-group basis to the same destinations from points in Washington and Oregon, on their own branch lines, or on their own proprietary but not directly operated branch lines and from points on some of their independent connections, results in undue prejudice to the complaining lumber companies.

Brown's recommendation is that the trunk lines be required to remove the prejudice by establishing joint rates from points on the Washington Western to interstate destinations on the Pacific coast-group basis. That recommendation is not based on the general proposition that junction point rates must be extended to branch line points, but that when carriers elect to establish blanket rates from a group they may not extend such blanket rates to their own branch lines and to the points on selected independent connections to the hurt of shippers on other independent connecting lines.

A distinct ruling proposed by Brown is that the rates from points on the Washington Western are not intrinsically unreasonable, but merely unduly prejudicial, because shippers from points on the branch lines of the trunk lines and shippers from points on some of the independent connections of about the same character of the Washington Western are able to ship at the coast-group basis, while the shippers from points on the Washington Western are compelled to pay the local rates of Washington Western in addition to the coast-group rates from the junction points.

The trunk lines said that they extended the group point rates to points on the independent connections only when compelled by competitive reasons. Brown pointed out, however, that competitive conditions surrounding the connections between the Washington Western, on the one hand, and the Great Northern, Northern Pacific and the S. P. & S. part of the St. Paul system, are the same as the competitive conditions surrounding the connections of some of the independent short lines from which the coast-group rates prevail, but that shippers from points on the Washington Western pay higher rates.

Points on the Washington Western, Brown said, are well within the limits of the coast-group. There is no question about that, so there can be no dismissal of the complaint on the theory that it is merely a question whether the points under consideration are or are not within the group from which the blanket rates on lumber and forest products apply. Brown insists, in his report to the Commission, that while a trunk line has a right to conserve its revenues it must give like treatment to shippers under like conditions, and that a trunk line cannot say that with regard to shippers on one independent connection that they shall have group rates while the shippers on another independent connection similarly situated shall not have the group rates.

Brown said that there had been no showing of damage by the complainants; that they had not shown that their competitors on the proprietary and independent branch lines to which the coast-group basis of rates had been extended made the prices of lumber and forest products which the complainants had been forced to meet. No testimony was introduced at this hearing to show damage, but at prior hearings the testimony was that practically all the lumber had been sold on the basis of the coast-group rates, and that the complainants were obliged to pay the additional charges representing the local rates of the Washington Western.

"There is no evidence, however," says Brown's report, "that complainants' competitors, located on the branch lines of the trunk lines or on the independent connections and enjoying the coast-group rates, fixed or controlled the price which complainants could obtain for their lumber, and, as far as the record discloses, complainants would have received the same price for their lumber had the rates of those competitors been the same as, or higher than, the rates from complainants' shipping points."

In the original proceeding, seven or eight years ago, the Commission held that the Washington Western was a plant facility and that the complainants were not entitled to relief of any kind. After the Supreme Court had held that tap lines are common carriers if they hold themselves out to be carriers for

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# State Commissioners Hold Annual Meeting

## Jurisdiction Over State Rates the Main Topic—Judge Anderson Says Day of State Control Has Passed—Addresses by Clark, Aitchison, Shaw and Benton—Meeting Fails to Adopt Resolutions Against Government Operation—Funk Heckles Aitchison—Report on Express Carriers

*The Traffic World Washington Bureau*

The opening session of the thirty-second annual convention of the National Association of Railway and Utilities Commissioners in the large hearing room of the Interstate Commerce Commission, November 9, was devoted to an address of welcome by Commissioner Edgar E. Clark, chairman of the Interstate Commerce Commission; the annual address of Walter A. Shaw, of Illinois, president of the association, and the report of John E. Benton, general solicitor of the association. At the afternoon session of November 9, George W. Anderson, former member of the Commission and now judge of a federal district court in Massachusetts, addressed the convention on the subject of "State Commissions as Regional Federal Commissions."

In his address Commissioner Clark discussed the various phases of the new transportation act and the relation between the federal Commission and the state regulating bodies. He spoke as follows:

"I perform no perfunctory duty in extending to you a welcome on part of the Interstate Commerce Commission, and I do not wish to perform that pleasant duty in a perfunctory manner. For myself and for each of my colleagues I extend to your association and to each of you a cordial, warm and genuine welcome. We wish you to feel at home and free to command us in any way in which we can contribute to the success of the meeting or to your personal comfort, convenience or pleasure. We are pleased that we have this opportunity to renew the pleasant acquaintances formed at former conventions and to make new acquaintances among those who have not been with us before.

"We are glad to have the opportunity to hear, and perhaps participate in, the discussions of questions of profound public interest that will here develop. It is not to be expected that we will all think alike as to these questions and problems. If we did, there could be no discussions from which we could gather light to aid us in formulating our final convictions and in performing our respective duties.

"The year which has elapsed since last we met in convention has been an eventful one. War is waste. It arouses all that is evil in human nature. Science has developed means for protecting the health of armies, for minimizing the fatalities and restoring the wounded, but no one has devised any means by which war can be conducted economically so far as the expenditure of money is concerned. It is always accompanied by a necessary prodigal expenditure of funds, and also by indefensible profiteering on part of those whose avarice for money predominates over all other instincts. It brings an aftermath of unsettled conditions and high prices.

"Federal control of railroads, adopted as a necessary war measure, was terminated February 29 by act of Congress. The roads were returned to their owners under legislation which formulated and expressed, and which was designed to carry into effect, a public policy widely different from that theretofore pursued. Costs of operation increased tremendously during the period of federal control. They were not offset by commensurate increases in rates and charges, with the result that huge deficits had to be made up from the public treasury. The rates that were in effect at the time federal control terminated were wholly insufficient to permit the roads to be operated under corporate or private control and retain solvency. The Congress provided a government guaranty for a period of six months during which it was expected that in accordance with the terms of the transportation act rates would be so adjusted that the carriers would be able to earn a net return, the reasonable measure of which was specified by the Congress. The conditions necessitated and forced substantial increases in the rates, fares and charges for transportation. Carriers were encouraged to present petitions for such increases as they felt were necessary. Those petitions were given the widest circulation and through weeks of hearings all who desired to be heard with regard thereto were heard.

"In this proceeding we had the privilege and the pleasure of having associated with us three members of state commissions, selected by the executive committee of your association responsive to our invitation, to sit with us throughout the hearings, the oral arguments and the conferences. These gentlemen, Hon. W. D. B. Ainey, chairman of the Public Service Commission of Pennsylvania, Hon. Royal C. Dunn, of the Railroad Commission of Florida, and Hon. John A. Guiher, of the Board of Railroad Commissioners of Iowa, devoted their time and attention to the case in a most faithful and commendable manner. They contributed much to the clarification of puzzling angles of the situation, and we can only hope that they derived as much pleasure from the experiences and association with us as we derived from our association with them.

"The conclusions which we reached were assented to by the members of the state commissions who sat with us, and, as we are informed by Mr. Benton, the solicitor of your association, corresponding increases in intrastate rates, fares and charges were with reasonable promptness accorded by the commissions in 23 states. In only two states were the petitions for increases denied in whole, and in these instances, as we are informed, the carriers made no effort to present to the state commissions evidence in support of their petitions. In the remaining states important increases in rates or fares or both were accorded by the state commissions. In several states the commissions held that they were without jurisdiction to authorize increases in rates or fares that had been fixed by statutory enactment.

"In each case in which increases sought have been denied or granted only in part by the state commission the carriers have petitioned us under the provisions of the transportation act to institute investigation and determine whether or not the existing adjustment creates or continues undue preference of state traffic, undue prejudice or unjust discrimination against interstate traffic, and the means by which such prejudice or discrimination, if found, shall be removed. These questions, upon which widely varying views are entertained, the troublesome and, in a sense, unpleasant. They are of intense interest to state commissions, to our Commission and to the railroads. We are all officers of the law and we are all anxious to perform properly and conscientiously our duties as such. I assume, of course, that it is the desire of each to conform to the laws which he has obligated himself to administer and abide by. It is to be devoutly hoped that the discussion of these questions may serve to clarify doubtful or controverted points and assist us all materially in rightly doing that to which we have devoted our energies.

"It is not, I think, extreme or exaggerated to say that we will never again have in this country private control and operation of railroads unaccompanied by state and federal regulation. And even if we shall come to government ownership and operation, the necessity for a separate tribunal with jurisdiction to determine questions of reasonableness of charges and alleged discriminations will be present. It is to be noted that the government-owned railroad in Alaska and the government-owned water lines acquired during federal control are subject to the provisions of the interstate commerce act. The transportation act, 1920, is a solemn declaration of the federal policy respecting the relation of the carriers to the public and to the government and with regard to regulation of the carriers' activities. The field of supervision and regulation has been widened and activities heretofore untouched by federal regulation have been definitely and specifically brought within that field.

"The experiences of the war and of the period of federal control of railroads brought home to the whole country a realization of the vital importance of adequate transportation facilities. It has become clear, as it was always obvious upon a little reflection, that private capital will not furnish transportation unless it can receive a reasonable return. In other words, if we are to have adequate transportation facilities under corporate or private ownership and operation, the public must pay prices for the services rendered that will make the business reasonably profitable. The basis upon which to determine that reasonable return, as laid down by the courts and by the Congress, is the fair value of the property devoted to the public service. The determination of that fair value is a perplexing problem that is embarrassed by a multitude of details. On this, as on all other important questions, there are those who take the extreme view on either side, and, as is generally the case, the truth and reason lie somewhere between the extremes.

"In the transportation act the Congress has in effect assured the owners of these properties that they will be accorded opportunity to earn a reasonable return upon the value of the property which they provide for use by the public. It has placed upon the Interstate Commerce Commission the duty of adjusting rates so as to produce that result. This is a very definite departure from the policy formerly followed of empowering the federal Commission to prescribe only the reasonable maximum rate, fare or charge. The broad policy adopted by the Congress

is exemplified by the liberal provision for loans to carriers from the public treasury, thus rendering possible the acquisition of needed facilities that it might otherwise be impossible to acquire, and, in part at least, protecting the less fortunately situated roads from an overpowering burden of interest charges which otherwise they might be obliged to assume, however doubtful their ability to carry it might be. Recognizing the fact that a comparatively few of the stronger and more fortunately situated roads could earn a fair return under rates that would be insufficient for the greater number of roads, and in an effort to succor the needy and help the weaker roads, the Congress provided that earnings in excess of the specified fair return shall revert in large part to the government and be used as a revolving fund from which financial assistance is to be afforded in procuring facilities with which to improve and enlarge the transportation system of the country.

"The Commission is now for the first time charged with the duty of supervising the issuance of securities by the carrier companies. Careful study of the conditions led to the practically unanimous view that in this matter the federal jurisdiction should be exclusive. The necessity for such supervision was long ago recognized by many of the states, but with large systems of road running through several states and the impracticability of issuing stocks and bonds against the segregated properties lying in those respective states such supervision by states was unsatisfactory and in a large sense impracticable. The necessity for governmental supervision of these matters arose from, and was demonstrated by, improper and indefensible practices of inflating the indebtedness and obligations of certain carriers, thus causing the public to pay returns upon fictitious values, or imperiling, for speculative purposes, the solvency of the companies. Indebtedness was laid upon some which it was practically certain the property would not be able to bear. Receiverships and reorganizations followed and, surprising as it may seem, in many instances the properties emerged from such receiverships with increased rather than reduced capitalization. If the speculators and gamblers who perform such financial jugglery were playing only with their own money and the transportation facilities of the country were not injuriously affected thereby, the public would care but little about their gains and losses. But when the bonds and stocks are sold to innocent investors who suffer when the crash comes, and when the public is deprived of adequate transportation as a result of such transactions, the investor, the public, and the honestly managed roads need, and are entitled to, the protection afforded by strict supervision by disinterested, responsible officers of the government.

"For the first time the federal law requires the securing from the Commission of certificates of public convenience and necessity before a new road can be constructed or operated and before a road in existence can be abandoned. In this connection certain powers are appropriately reserved to the states. So long as the public must pay reasonable return upon the value of the property that it uses it has the right to protection against unnecessary or unwise expenditures for duplication of lines by competing systems, and against the building of roads for purposes of pure speculation or spite. When a railroad is constructed industries and homes that are wholly dependent upon it for transportation grow up along its line. Surely the owners of those industries and homes are entitled to an assurance that that road will not be abandoned except for reasons that appeal to the judgment of an authority that represents the public interest.

"For the first time the federal Commission is charged with the duty of regulating, to the extent that may be found necessary to meet emergencies, the service of the carriers. The powers that are conferred upon it in this regard are very sweeping and necessarily give wide opportunity for the exercise of discretion if, and when, an emergency arises. This question is to be discussed by another and I shall refrain from attempting to touch upon the particular features of the law, the policy under which it is being administered or the vexatious and troublesome questions that arise thereunder, other than to say that our somewhat brief experience since the termination of federal control has furnished abundant evidence of the fact that when it comes to a question of getting or being deprived of service, the business interests of the country are more interested in service than they are in the exact measure of compensation which they are to pay therefor.

"The Interstate Commerce Commission is charged with many duties in connection with the adjustment of claims on part of the carriers against the government, and claims of the government against the carriers, growing out of the possession and use of the carriers' properties by the government. When the final balance sheet shall have been completed it will be found that the American people paid a handsome sum for the use and operation of the railroads during the war, but as such use and operation was essential as a war measure we must, I think, in fairness consider it as a part of the necessary expense of the war.

"In framing the transportation act the Congress refrained from giving its attention to palliatives and temporary expedients and formulated an act upon a policy which contemplates much of permanency and which clearly cannot be consummated except after several years. That policy contemplates, and that law provides for, a consolidation of the many roads into a limited number of large systems. This consolidation is not to be permitted in a haphazard way, but must progress under a predetermined, general, comprehensive plan. For many years the popular belief was that we ought to have the largest possible measure of competition between carriers. Such competition was encouraged and all attempts to suppress or minimize it were declared to be unlawful. If we were to have no governmental regulation of the carriers that policy might be in the interest of the public, but so long as we have governmental regulation under which the government through administrative agencies determines what the carrier may charge for its services, unrestrained competition fostered and promoted for the purpose of depressing charges to the lowest possible level is not in the public interest. That competition, carried in many instances to a ridiculous extreme, has played its part in bringing the railroads of the country to the financial condition in which they were found when the stress of war came to tax all our resources and energies. If the government determines what the reasonable chrage shall be and requires safe, reasonable and adequate service, it is difficult to see how the public interest can be served by fostering a cut-throat competition between a large number of small and impecunious roads rather than to consolidate them into a strong, comprehensive and logical system which can at less cost furnish better service. This policy of consolidation of roads is rounded out and reinforced by exempting such transactions when approved from the operation of all anti-trust laws.

"As a part of the new policy and of the new law the federal government has, in large measure, assumed control of the questions of what compensation the railroad employes shall receive, the hours they shall work for that compensation, and the conditions of their employment in so far as they affect the compensation. The right of the carriers to earn the stipulated percentage of return upon the value of the property devoted to the public use is contingent upon their being honestly and efficiently conducted and managed.

"More stability in rate adjustments should come from the removal of the limit upon the time during which the Commission's orders may continue in force and effect.

"It is therefore seen that, when summed up, this new policy, while in effect guaranteeing the owners of the property opportunity to earn a reasonable return on the value thereof, reserves to the government supervision of the amounts that shall be charged the public for services, of the question of honest and efficient management, of the issuance of stocks, bonds and other evidences of indebtedness, of the amounts that shall be paid to employes, of the right to extend or abandon lines, and of the use of the existing facilities whenever emergency or public interest requires the exercise of that power. The public interest is paramount to the interest of the carrier at every point, and this is true even as to the level or measure of the rates, fares and charges which the carrier may collect and the public must pay, because it cannot be said that the public interest is served by maintaining a level of rates which is insufficient to permit the furnishing and maintenance of an adequate transportation agency.

"The purpose of the Congress to preserve to the states their police powers and their right to regulate their internal affairs is recognized throughout the new act, with the exception, to which I have referred, of supervision of capitalization, and the reservation of the federal power to require removal of undue prejudice or unjust discrimination against interstate commerce caused by different levels of state and interstate rates. The law specifically authorizes co-operation between the state and federal commissions in matters that are of common interest to both, which we have for some time favored and recommended. We were, of course, convinced that much of good could be accomplished by that means when we expressed our approval of and recommended such a plan. The convictions which we then had have been greatly strengthened by the experiences in instances in which such co-operation has been had, and this is especially true of the instance to which I have referred in connection with the recent general increased rate case. We hope that this practice may develop and expand. There may and doubtless will be instances in which the positions of the federal and the state commissions will necessarily be rather diametrically opposed, but it may, I think, safely be said that those instances will almost without exception be attributable to jurisdictional questions for which neither commission is responsible. In instances in which the views of the federal and the state commissions may diverge or be found in disagreement it may become necessary for the federal Commission to exercise the powers specifically reserved to it in the transportation act, but performance of duty by either state or federal commission will afford neither occasion nor reason for any differences of a petty nature or that go beyond the four corners of the case or issue in question.

"Through the administration of the law the carrying out of the national policy which I have briefly sketched, with the accompanying tremendous responsibilities and arduous duties, has been placed in our hands. In this undertaking we invite your assistance and co-operation in so far as you can consistently accord same. A full measure of success cannot be achieved unless we can have a cordial spirit of helpfulness and co-operation on part of the state commissions, the railroads, the shipping public and ourselves. That spirit now obtains in large part in these several quarters. If it can be made universal or unanimous it will bring much of good to all concerned and we will rapidly approach those conditions in transportation affairs for which we so ardently hope and so earnestly strive."

### Address of President Shaw

President Shaw, referring to the intrastate rate situation, declared that it was the duty of the state commissions to oppose an interpretation of the transportation act which would diminish the regulatory powers of the states. He also discussed the regulation of public utilities by the state commissions and of the opposition that has developed to such regulation on the part of the public. His address follows:

"At the time the last meeting of the National Association of Railway and Utility Commissioners was held in our national capital the world's greatest conflict, in which our nation was an important participant, had just been brought to a close by the signing of an armistice, and naturally our thoughts then were directed to the future and the solution of problems arising from the great war.

"President Max Thelen, in his annual address to the convention in 1917, said:

"When the light of peace shall again shine upon our country, our nation will be a different country from the one which we have known.

"As we stand here today and face the many problems of the present and future, we truthfully can say President Thelen was a great prophet.

"Acting President Charles E. Elmquist, in his annual address to the convention in 1918, said:

"As public officers, we are all sworn to obey and uphold the laws and the constitutions of our several states and of the nation. This obligation, like that of citizenship, should not be assumed thoughtlessly. It carries a grave responsibility. All of you have made sacrifices during the war—sacrifices of sons and money, of food, energy, property and conveniences. Bureaucratic orders have been issued, and by you accepted uncomplainingly. The sole thought has been to help the country. No demand remains unsatisfied. When the pro-German and pacifist elements threatened the success of our military efforts, you unhesitatingly met every call to patriotism without giving a moment's thought to the effect which such action might have upon your personal fortunes or social relations. 'My Country' was the watchword of your actions.

"Now that the war is over, 'My Country' must still be the watchword of your actions. The storm may be severe and the danger great, but you will not falter in the performance of your duty.

"Gentlemen of the convention, the 'storms' have been severe and the 'danger' has been great, but it gives me great pleasure to say that since the close of that great conflict the watchword of each state commissioner in the performance of his duties and in meeting the new conditions so accurately forecast by ex-President Thelen has been 'My Country.'

"Regulation came about by reason of insistent demands by the public to correct abuses by so-called monopolies engaged in the utilities field, upon which the public were dependent, but had no effective instrumentality to protect it. The keynote of all regulatory laws is that the public shall receive adequate service at just and reasonable rates.

"The public was of the mind that many of the charges exacted by the common carriers and corporations engaged in furnishing such services as gas, electricity, telephone and warehouse facilities were excessive, and that by reason of excessive rates, and the sales of large quantities of watered securities, immense fortunes were made and the public correspondingly plundered.

"Disregarding for the moment the question as to whether or not the public had the correct viewpoint, the fact remains that, prior to our entry into the great war, regulatory bodies such as state commissions had corrected many abuses, particularly as to capital issues. In many cases rates were substantially reduced. The authorization of increased rates was the exception. For example, it was at the outbreak of the great war that the Interstate Commerce Commission disposed of the 5 per cent increase which was vigorously fought by various shippers and state commissions. Compare that with the increases in freight rates granted by the Interstate Commerce Commission in July, 1920, amounting to over one and one-half billion dollars, and which, mind you, was on top of the 25 per cent increase placed in effect by the government while the carriers were under federal control. Apparently the public is convinced that in order that the carriers may function and properly serve the shippers of this country substantial relief must be granted; therefore, they have accepted the findings of the Interstate Commerce Commission as necessary and for the best interest of all. In pre-war times a hint at such a colossal increase surely would have spelled defeat. Thus again is brought vividly to us how times have changed!

"Within the last two or three years insistent demands have been made upon state commissions to increase all classes of rates coming within their jurisdiction. In the majority of cases it has been necessary to meet those demands by authorizing substantial increases. In most instances, especially as to street car fares, the increases authorized exceeded those prescribed by so-called contract ordinances or franchises granted prior to the creation of the state commissions. The abrogation of many of these franchise provisions has quickly been seized upon by self-seeking politicians with the idea of furthering their own selfish ends by making the commissions unpopular.

"This type of politician has come into his own with great blare of trumpets. He plays upon the well-known prejudices of the public against corporations in general, and utility corporations in particular, by picturing them as contract breakers who prospered unduly before the war, accumulated excessive bank accounts, and are now unwilling to share their part of the burdens brought on by the war. The companies are cleverly depicted as fully capable of carrying out their contracts, and that were it not for the state commissions these contracts would be binding and the public would not be required to pay the increased rates. These individuals, of course, conveniently forgot to tell the public that, in the absence of commissions, utility corporations have the right to resort to the courts, which would fix the rates under provisions in our federal and state constitutions that prohibit the confiscation of property without due process of law. Such procedure has been adopted by certain carriers in obtaining increased passenger rates in Illinois and other states. That these arguments of the politicians are popular seems plain when I call your attention to the fact that Mr. Esch, chairman of the committee on interstate and foreign commerce in the House of Representatives, was defeated for renomination because of the part taken by him in the passage of the so-called Esch-Cummins bill. Many other members of Congress who participated in that piece of legislation have met determined opposition in recent elections. In some of the states the abolishment of the state commission or an entire change in the personnel has been made the leading political issue, and in all candor I must say that in some instances the movement has met with much popularity.

"Apparently, sight was entirely lost of the fact that the state commissions were created for the very purpose of breaking so-called ordinance contracts. In the pre-war period the public believed that many of the rates authorized by ordinance were excessive, and necessarily if the state commission was to give any relief the rates prescribed by ordinances or otherwise must be disregarded. That part of the public which now accuses the commissions of being contract breakers and corporation tools by reason of disregarding these so-called contracts is responsible for obtaining decisions from various state courts, and even the United States courts, that the rates prescribed in these ordinances must be set aside when it is determined, as provided by law, that the rates so fixed are unjust, unreasonable and excessive. From the point of view of that same part of the public, in the pre-war period, the test applied to determine the popularity of the commission was the extent to which it lowered rates and broke so-called contracts.

"As a result of the great war the public mind is greatly unsettled. Economic conditions have changed. Many have taken advantage of the situation and their actions have been governed, not by the motto of 'My Country,' but that of 'Myself.' That is, those having no consideration for the future or the public good made the most out of the situation, regardless of consequences or the public opinion, and their actions were not conducive to the return of normal and sane conditions.

"Having in mind the disturbed economic conditions and the prejudices of the public as fired by the politicians, aided by the prevailing unrest, we might well pause at this time and give serious consideration to the question, will regulation survive? I believe it will, but we should be alive to the situation, give the most serious thought to the subject, and, wherever possible, remedy existing defects and make changes or modifications in our laws to meet the existing conditions.

"In my judgment, among the many enemies of regulation, three are of principal importance, and of these the greatest is politics. Politics and regulation will mix no more than will oil and water. Methods followed in selecting commissioners vary from election by direct vote of the people for a term of years, to appointment by the governor of the state for terms varying from four years to perhaps six years. In at least one of the states the terms of all expire simultaneously with that of the governor. Hence, when a new governor comes into power it is possible for him to make a complete change in the personnel of the commission, a possibility which in the long run means defeat to regulatory efficiency. In other cases the terms are so fixed that if the law is carried out in spirit there will always be a majority of experienced members on the commission. Further, in nearly all states the compensation is in no

way commensurate with the exacting duties of the position and the sacrifices required.

"The conditions above named should be corrected as far as possible, and I recommend that the association take appropriate action, either by a resolution adopted at this convention, or by creating a committee to give the matter special attention and and then take appropriate action upon its report. In making this recommendation I have in mind that this association shall call the attention of those responsible for government to things necessary to do in order to obtain and retain competent commissioners by eliminating them from political influence as far as possible. We should also endeavor to impress upon the public that unless regulation and politics can be divorced and some continuity of service assured, accompanied with commensurate compensation, the whole structure will fail, to the detriment of the public.

"The second most powerful enemy of regulation that I would list is the group which believes that all utilities, including the common carriers, should be owned and operated by the federal or state governments, or their duly authorized agencies. These parties reason, and I think correctly so, that if regulation fails the next step is federal, state or municipal ownership.

"Without discussing the merits or demerits of governmental ownership or operation, I believe the public should be brought to a better understanding of the principles involved in regulation. It would greatly benefit us at this time to make a scientific survey of the statutes under which the various states are operating, the enforcement of the same, and the results accomplished. Due consideration should be given to criticisms made, having in mind that if defects are found they should be remedied with the purpose of giving regulation a fair and impartial trial. If this is done and regulation still is pronounced a failure, then it will be time to think of adopting universal governmental ownership, or some substitute for regulation.

"The third principal enemy of regulation is the improper attitude of many utilities towards the public. Regulation carries with it the thought that it is against the best interests of the public to permit competition in public utility enterprises and that the public will be the better served by regulating a monopoly by public authority.

"The public demands, first, that the service received be adequate and the conduct of the officers and employes of the corporation be obliging and courteous. Has this always been the case? I am afraid it has not. Perhaps the most striking example has been the operation under government control of all railroads during the war, when competition was suspended. There was much complaint on the part of the public as to service rendered and the attitude of employes as compared with competitive conditions existing before the war. In my judgment, unless the public shall receive at least as good service and as low rates through a regulated monopoly as would be received under the whip of competition, regulation will fail and some form of governmental ownership prevail.

"May I suggest to my friends responsible for the management and operation of the utilities that if they desire to continue ownership and management of their properties they give serious consideration to their attitude toward the public, the conduct of their employes, the service rendered, the most economical management, and rates demanded? When I speak of rates demanded I have in mind the extreme position taken by many companies in rate proceedings during the war and even at this time, that for rate-making purposes value should be determined by using present inflated war prices. Former Justice Charles E. Hughes, acting as referee in the case of Brooklyn Borough Gas Company vs. Public Service Commission, in commenting upon using present day costs to determine value, said:

> This would result in allowing a public service corporation to take advantage of a public calamity by increasing its rates above what would be a liberal return not only on actual investment, but upon a normal reproduction cost, in the view that unless it could make an essentially exorbitant demand upon the public it would be deprived of its property without due process of law.

"There is much force in this statement.

"While on this subject may I further suggest to my utility friends that they give serious consideration to setting their own house in order before they charge regulatory bodies with handicapping them in not properly giving relief by increased rates, not granting sufficient returns upon investment in property, interfering in the management of their business by assuming undue control, and numerous other charges known to you all? No doubt improvements can be made in the various laws governing the actions of commissions, but this is no excuse for saddling upon the commissions, in additions to their just burdens, the shortcomings of utility corporations which they properly should carry themselves and manfully meet.

"The question of finances is another important adjunct to regulation, and especially so at the present time. It is axiomatic that money will flow to those channels which offer the greatest returns commensurate with the security afforded. During the last few years we commissioners repeately have been told that the financing of public utility enterprises has been seriously hampered and in many cases rendered practically impossible by reason of conditions brought about by the war, by the activities of politicians in obstructing franchise negotiations, and by the failure of regulatory bodies to grant needed financial relief because of political expediency or similar considerations. Further, we are told that life insurance companies, banks and other semi-public institutions have made large investments in utility securities which now have greatly depreciated, and therefore those institutions are in great danger unless the utility corporations are afforded humane treatment and more liberal consideration by the public.

"Be this as it may, perhaps the time has come for those who control the finances of this great republic of ours (and comparatively speaking, they are few in number) to take a broad view, or an inventory of the situation, so to speak, and honestly examine themselves to see if they can satisfy their own consciences as to whether or not they have performed their full duty during this readjustment period and crisis. Having in mind their public duties and obligation to the nation, those who control the financial policies of this nation might well assume much greater responsibilities and burdens than they appear to the public to have done thus far. Many commissions have said in orders granting increased rates that the public should not be required to assume all of the burden, but the utility should assume its full share. May not the same doctrine apply to those responsible for the finances of our utility corporations. Apparently there is now a great lack of confidence on the part of the public, and inasmuch as our financial institutions have important interests in the future success of our utilities in the way of protecting securities now owned or held by themselves and their subsidiaries, they might well greatly profit by a campaign of education, assuming their just portion of the burden and risk, and educating the public to that fact. I commend this to their serious consideration.

"Solicitor Benton will fully advise the convention as to the activities of the association during the last year, and in view of this fact I will call to your attention and discuss a few of the more important happenings.

"In February, 1920, Congress amended the interstate commerce act and enlarged the duties of the Interstate Commerce commission by the passage of a transportation act, known as the Esch-Cummins bill, effective March 1, 1920. During its pendency your committee on state and federal legislation gave this bill its undivided attention. The executive and valuation committees also took part in this important legislation. Viewing the situation as a whole and taking into consideration the propaganda of the carriers during past years to eliminate all state control of their properties, those representing your association believe that the state commissions have no cause to complain, although the provisions of the bill are not satisfactory in all particulars.

"In the past this association repeatedly went on record in favor of amendments to the interstate commerce act permitting joint hearings in matters where there was a conflict between federal and state authority. Section 416 of the Transportation Act of 1920, in part, provides as follows:

> Whenever in any investigation under the provisions of this act, or in any investigation instituted upon petition of the carrier concerned, which petition is hereby authorized to be filed, there shall be brought in issue any rate, fare, charge, classification, regulation, or practice, made or imposed by authority of any state, or initiated by the President during the period of federal control, the Commission, before proceeding to hear and dispose of such issue, shall cause the state or states interested to be notified of the proceeding. The Commission may confer with the authorities of any state having regulatory jurisdiction over the class of persons and corporations subject to this act with respect to the relationship between rate structures and practices of carriers subject to the jurisdiction of such state bodies and of the Commission; and to that end is authorized and empowered, under rules to be prescribed by it, and which may be modified from time to time, to hold joint hearings with any such state regulating bodies on any matters wherein the Commission is empowered to act and where the rate-making authority of a state is or may be affected by the action taken by the Commission.

"Acting under the authority of the above provision, the Interstate Commerce Commission, through its chairman, invited the National Association of Railway and Utility Commissioners to designate three state commissioners to sit with it during the hearings involving the application of the carriers for a general increase in passenger and freight rates, decided in July of this year. Accordingly, after giving each state commission an opportunity to be heard by calling a meeting in Chicago and Washington and acting on the authority of the state commissions assembled, your president designated Commissioners Guiher, of Iowa, Dunn, of Florida, and Ainey, of Pennsylvania, to sit with the Interstate Commerce Commission. Each state commission has been furnished a copy of their conclusions. I am advised by these three commissioners that they were treated with great courtesy and cordiality, and afforded every opportunity to express their views. For this treatment the association is most grateful to the Interstate Commerce Commission. I believe much good has been accomplished by this joint hearing and that it was beneficial to all concerned. True, as a result of the direct application of the increases authorized by the Inter-

state Commerce Commissioner and the subsequent action of the carriers and state commissions, many so-called Shreveport cases have been started and are now pending before the Interstate Commerce Commission. The extent of the conflict between federal and state authorities necessarily depends largely upon the conclusions reached and the orders issued by the Interstate Commerce Commission when it disposes of the applications of the carriers. Whatever the results may be, it must be kept in mind that state commissions must be guided by their various statutes. From this there is no escape. The so-called maximum fare laws in force in many states form a striking example. Under these laws the state commissions are deprived of all authority as to granting increases in passenger fares exceeding those allowed by the maximum fare statute. No doubt these laws will create a conflict which ultimately will be decided by the highest court of the land. By reason of complicated rate structures and the many diversified interests to be dealt with, many conflicts as to freight rates necessarily will arise and doubtless will involve federal and state authorities. I believe it is possible to iron out many of the conflicts by both the federal and state commissions making an honest endeavor to carry out the spirit and intent of the co-operative provisions in the transportation act of 1920. To the Interstate Commerce Commission may I suggest that at the earliest opportunity it promulgate general rules governing joint hearings as provided in the transportation act? This will be helpful because it will not require the Interstate Commerce Commission to take the initiative in all cases, as is now the case in the absence of rules adopted by the federal Commission. To the state commissions may I say that in good faith they should co-operate with the Interstate Commerce Commission when given an opportunity to do so? If such action is followed on the part of the federal and state commissions the public must be the benefactor. In the last analysis the public expects results. It is not particularly interested from what source relief is obtained, its sole interest being the agency by which it can obtain the best results, either by federal or state agencies or by their combined efforts.

### States Must Preserve Their Rights

"There are now pending before the Interstate Commerce Commission many applications filed by the carriers asking that the federal commission set aside orders entered by state commissions and authorize the carriers to place in effect in all particulars the charges authorized by the federal commission in its order of July, 1920. Stripped of the nice phraseology used to soften the assault upon state authority, the contentions of the carriers are that the transportation act of 1920 takes away from the states all real control over intrastate rates. Briefly, the carriers contend that Congress has empowered the Interstate Commerce Commission to determine all the elements by which intrastate rates are fixed and has imposed upon the state authority the purely ministerial duty of recommending legislation or promulgating orders naming the rates made necessary by the findings of the Interstate Commerce Commission.

"I am of the opinion that Congress, by the transportation act of 1920, did not intend to abridge the authority of the states, or extend the power already possessed by the federal commission as construed by the United States courts. To contend that Congress, by passage of the transportation act of 1920, struck down all real power of state authorities over intrastate rates is to impute to it the intention to accomplish indirectly something which it not only failed to secure in definite terms, but which is contrary to any specific declaration in the act.

"If, by their actions, the carriers decree that they shall continue their warfare against state authority as they have in the past, I trust and urge that this association will continue to use every honorable means to protect rights each state is entitled to under the Constitution of the United States and the constitution of the state under which the commission may be acting. This is a sworn duty from which I can see no escape. No doubt in the future, as in the past, it will be charged that your action was based upon the selfish motive of retaining your position and thus keeping yourself in power. My answer to this calumny is that the only standard one humtn being has by which to judge another is himself, and it necessarily follows that whenever an individual, association or corporation charges that a public official acts from ulterior motives or for selfish interest only, it is an admission that he who makes the charge would conduct himself in the same manner when placed in similar circumstances.

"Acting upon the urgent request of several state commissions, I called a conference of all state commissions interested in the preservation of states' rights early in September, 1920, at Chicago for the purpose of discussing and formulating some unified action wherewith to meet the position taken by the carriers as to the authority of the Interstate Commerce Commission over intrastate rates. Carrying out the wishes of the meeting, I appointed a committee of five to represent the states in all the so-called Shreveport cases then pending before the Interstate Commerce Commission and to act in conjunction with our general solicitor at Washington. This committee offers its aid to each state involved and will act in harmony with it if possible. The committee and the solicitor have filed a very able and creditable brief with the Interstate Commerce Commission in behalf of some of the cases now pending, and they also took part in the oral arguments before the federal Commission.

"If the carriers pursue the course already outlined by them litigation will follow, and these cases must find their way to the highest court of our land. In order to meet this litigation with a united front, but without abridging the rights of each state, I strongly recommend that the association create a new committee composed of at least five members, known perhaps as the committee on litigation. This committee should act in a capacity similar to that of the present committee on state and federal legislation and that of the committee on valuation.

"The association, in convention in 1915, extended the activities of the valuation committee and authorized it to employ a solicitor with an office in Washington. This was done, and from time to time you have been fully advised of the results. The committee and its solicitor have taken an active part in practically all valuation proceedings before the Interstate Commerce Commission. In fact, the only united representation of the public is that coming from the activities of this committee, although good work has been done by several states. Much good has resulted to the public through the activities of this committee. However, may I suggest that since the passage of the transportation act of 1920 the valuation proceedings authorized by Congress and now in progress before the Interstate Commerce Commission become of greater importance than ever before, and without any mental reservation I believe the keystone to just and reasonable rates will be the value of the carriers' properties as determined under the provisions of the act of Congress of 1913. Therefore, may I urge upon you that the good work already accomplished by the valuation committee be continued with renewed energy? Further, may I urge that each state take such individual action as possible in connection with the valuation of carrier property within its borders, having in mind its limitations as to appropriations and the necessary man power?

"In connection with the question of valuation I also desire to call your attention to the decision of the United States Supreme Court in the Kansas City Southern case, handed down March 8, 1920, which reversed the Interstate Commerce Commission in its findings as to the elements necessary to consider in determining land values. This decision also was contrary to the contentions advanced by the states in this matter. It was thought by some of us that the act should be amended and Congress should speak more specifically concerning the elemtnts to be considered by the federal Commission in determining value of land used by carriers, and already bills have been introduced in both the Senate and House by the chairmen of the Interstate Commerce Commission committees. I suggest that during the coming year this matter be given special attention.

"By action of the association the duties of the solicitor for the valuation committee have been enlarged and his title changed to general solicitor, with power to represent the association or states upon request in all proceedings coming either before courts or the Interstate Commerce Commission, and to perform such other work as may be required of him. When we look back over the war period we well may ask: 'How could we have functioned without a representative in Washington, D. C.?' The tendency of the present time in practically all walks of life appears to be towards centralization of power. Such being the case, it is most important that our Washington office be maintained, not only as now constituted, but, if possible, very materially enlarged so as to be able to meet the new conditions and the new problems confronting us. I wish I were able to command language that would convince each state of the advantages to it and to those whom it represents that accrue from maintaining such an office provided with the means essential to the employment of the necessary help. I wish I could be so convincing that upon a roll call of the states there could be raised by voluntary contributions a fund of at least $50,000. I urge with all the force within me that each state give this subject more serious thought and consideration than ever it has in the past, to the end that your office in Washington shall be a greater power for good and a more powerful champion of public rights.

"From the foregoing discussion I therefore summarize my recommendations as follows:

1. That the association either pass appropriate resolutions or create a committee to make a general survey of public utility laws, including the manner of selecting members of regulatory commissions, their compensation, their general duties, and the structure of the organization used to carry out the provisions of the statutes. In its report this committee should make definite recommendations concerning possible changes in regulatory laws that, in its opinion, would be of benefit to the public.

2. That the association request the Interstate Commerce Commission to promulgate suitable rules governing the joint hearings provided for in the transportation act.

3. That the association create a committee, known possibly as the committee on litigation, primarily to deal with matters arising from proceedings before the Interstate Commerce Commission brought under the provisions of the transportation act of 1920.

4. That proper attention be given possible clarifying amendments to the interstate commerce act, particularly as to land values.
5. That adequate financial support be given the Washington office of the association in order that the constantly increasing scope and importance of its work may be cared for properly, and that the excellent work heretofore done by the valuation committee be continued with vigor.

"Since I became a member of this association I have always noted with great satisfaction the existing co-operative spirit, the unanimity of purpose, the setting aside of selfish motives, and the presentment of a solid front in our battles. I am happy in saying that during the past year all of these things have been continued. I have enjoyed such cordial support from the various chairmen of the committees and members of the state commissions that it has made my work as president a pleasure and it has greatly contributed to the success and progress made by the association during the past year, which has been most gratifying. Standing here before you today, I can truthfully say that our watchword during the past year has been 'My Country.'"

### Address of Mr. Benton

Mr. Benton reviewed the activities of his office in the last year, covering matters relating to the forming of the transportation act, valuation, the advanced rate case and the intrastate rate situation. He referred to the efforts put forth by the railroads when the transportation bill was before the congressional committee, declaring that "for many years the railroads had carried on a propaganda aimed at the destruction of the regulatory powers of the state commissions." He reviewed the situation with respect to the elimination of the words, "any undue burden on interstate commerce," from Section 13 of the act to regulate commerce as amended by the transportation act.

"This was a clear victory for the state commissions, and was so recognized at the time," he said.

"The representatives of carriers are resourceful, and they have in very large measure the virtue of never-ending perseverance. In the early days of February the presidents' conference committee asked the conference committee of the House and Senate to insert into the bill a provision authorizing the federal commission upon a purely ex parte showing to suspend intrastate rates alleged to be discriminatory, and to order into effect substitute rates pending an investigation of the alleged discriminatory character of such intrastate rates. Shortly after this proposition was presented the solicitor learned, on authority which he could not doubt, that the conference committee had tentatively determined to insert a provision permitting such proposed ex parte proceedings. He immediately sought conferences with Senator Cummins and Congressman Esch. He saw each briefly, but learned nothing to his satisfaction. Then he sent telegrams to each commission advising of the situation, and suggesting that the commissions should enlist the aid of their delegations in Congress by telegrams addressed directly to them. Later he got a more extended conference with Senator Cummins and endeavored to show him the unfairness of ex parte proceedings. At the end of that conference the senator said frankly that he personally thought there should be nothing of the kind in the bill, and that he would immediately confer with Congressman Esch, and advise the day following as to the conclusion of the committee. After that conference the solicitor sent a telegram suggesting to the commissions that they delay any appeal to their delegation. It was, however, too late, and the next day when the solicitor went to Congressman Esch's office his secretary told him that he was doing nothing except answer phone calls and talk to congressmen who had received telegrams from their commissions, and wanted to urge that no provision for ex parte proceedings go into the bill.

"The decision of the conference committee was to reject in toto the proposition of the carriers. To what extent the telegrams from state commissions aided in bringing about this result, I cannot tell. The telegrams, however, served this good purpose: they showed us, and also to the conference committee, that in general the members of the House and Senate did not intend to have the powers of their state commissions destroyed, and that on matters affecting regulation they had a well-deserved confidence in the members of their commissions.

"As expressing the view of a single person, anything that your solicitor or any other representative of your association may say cannot carry any very great weight. As expressing the consensus of opinion of a body of public officials who are informed by experience and constant study of regulatory problems, and who enjoy such measure of public confidence as the members of this association do enjoy, what such representative may say is entitled to a great deal of weight. From my short experience as your solicitor I can say that the average congressman or senator has a very high regard for his state commission, and attaches very much weight to its opinion as to the merits or demerits of any proposed legislation. When an emergency arises involving a matter of importance members of the House and Senate are glad to be advised of the views of their own commission. On such occasions your representative here can be of much or little influence, accordingly as the different state commissions co-operate or fail to co-operate with him.

"This power of appeal to your congressional delegation ought not to be used except upon important matters. Personally, I think it should be used as seldom as possible. You ought not, however, to have a solicitor who has not the sense to recognize what occasions justify its use and what do not. When it is used it ought to be used by all the state commissions in unison. If this is done it can be demonstrated that Congress does attach importance to what the state commissions think as to legislation affecting matters within their jurisdiction.

"The problem is to bring home to the individual member of Congress or of the Senate realization that what the association representative here says is spoken for that member's own commission, because in the last analysis he has more confidence in his commission, and cares more what it thinks than he does about what all the other commissions in the country may think. On matters of legislation affecting your interest, therefore, the Washington office must depend for success upon your co-operation when it is needed.

"As the date when the conference committee was expected to report approached, Chairman Jackson and President Shaw came again to Washington and took upon themselves the main burden of responsibility, the solicitor giving them such aid as he could. Both were here when the bill was reported by the committee and remained until it had passed through the House.

"The bill was in many respects different from what we would have written. Nevertheless, the provisions which were designed to destroy state regulation were eliminated, and unless the carriers shall succeed in their present attempt to obtain by favorable construction from the federal commission and the courts an immunity from state regulation, which Congress refused to give them, the powers of state commissions in matters deemed by them of main importance have been successfully preserved.

"It has been said by a leading member of the conference committee that but for the representation before Congress by this association, the transportation act would beyond doubt have carried provisions which would have wiped out the jurisdiction of the state commissions. My own part in such representation was so modest, when compared with what was done by Mr. Elmquist and Chairman Jackson and President Shaw and their associates, that it is quite proper that I should say I believe the member of the conference committee was right in what he said."

Mr. Benton read a letter from President Shaw to Senator Cummins and the reply of the Senator who commended the state commissions for the able assistance they had given the conference committee when the railroad bill was being framed. Mr. Shaw said in his letter that the national association would co-operate with all concerned to the end that the new law "shall accomplish the purposes intended and be a complete success."

A review of the matters relating to the hearing on valuation held by the Commission preliminary to consideration of the carriers' application for advanced rates was given by Mr. Benton. He also reviewed the part taken by him as representative of various state commissions in the hearings before Examiner Butler in the express company consolidation case, and the developments to date in the intrastate rate situation.

On motion of Mr. Taylor of Nebraska the report of Mr. Benton was adopted and a vote of appreciation for Mr. Benton's services was given.

### Address by George W. Anderson

The address of Mr. Anderson was as follows:

"In legal form, our railroads are state-chartered, toll, public highways, each put, because of the requisites of safe operation, within the monopoly control of a single common carrier. In essential nature and in economic function, they are interrelated national highways with a superimposed carrier system, which should be administered as a co-ordinated, national unit. Slowly, reluctantly, and with persistent inadequacy, the American people have approached the recognition of the essential nature of their railroad problem. In my own thinking, I see no solution until our railroads are both unified and federalized. Very eminent lawyers, some of them in the United States Senate, believe that under the commerce clause of the Constitution, regulation of state-chartered railroads may be imposed, adequate to federalize for most necessary purposes. They may be right. I do not now discuss that problem. At any rate, the transportation act of 1920 goes much farther towards asserting essential federalization of our national highway-carrier system than has been yet generally recognized. Falling, in my view, far short of what ought to be done, from old standpoints it is, if constitutional, a very radical and progressive measure. On its face it is but experimental. It requires the Interstate Commerce Commission—a federal body—to devise a consolidation scheme for state corporations and authorizes such consolidations only as are consonant with that scheme. It does not permit unification or contemplate federal incorporation. It provides for a limited number of systems, thus bowing to the old fetish of competition in service—a worship that will be found as empty and profitless in the future as it has been wasteful and confusing in the past. Pending such consolidations, we shall have a wasteful crop of expensive rate-division litigation in the attempt to allocate earnings where needed to give the 6 per cent standard

return. If this clumsy pooling device fails to work, the main purpose of the new act is thwarted. But the nation, as a nation, has begun, and will neveh cease, financing its national highway-carrier system. It has attempted to take full control over making the prices, maximum and minimum, of the transportation product; of the building of new railroads and the extension or abandonment of old roads; of the issuance, and disposition of the proceeds, of securities; to limit net income to one-half the excess above 6 per cent, the other half to be recaptured and available, inter alia, for the purchase of equipment by the Interstate Commerce Commission; to require the common use of corporation-owned equipment and of terminal facilities built for strategic competitive purposes; and to authorize or approve the pooling of traffic, and even of earnings. Besides, by the wage board the federal government really controls wages—about 60 per cent of the cost of the transportation product. It is not too much to say that, under this act, the state-chartered railroad corporations have left, subject to their own real control, hardly more than the purchase of supplies, the fixing of the salaries of the executive and legal forces, and the initiative in the maneuverings for consolidations, out of which, during the next few years, many hundreds of millions of profits will accrue to the fortunate insiders. The new act leaves no competition worth mentioning except the competition among executives and lawyers to see which corporation shall pay the highest salaries and largest legal fees. In that field I suspect that competition will be effective and pleasant to the participants. The supplies will, under this system, be bought at adequate prices from parties sufficiently affiliated with the forces in control of these state-chartered corporations. Such result is the inevitable incident of technical railroad ownership by corporations belonging beneficially to widely scattered bondholders and non-voting or ignorantly-voting stockholders, and, therefore, managed by financial cliques owning little or no part of the properties they control. The New Haven used to buy its carriers of Brady, at prices high enough. That part of the old system of 'efficient private control' is fully preserved by the new act. The prohibition of interlocking officers and directors in section 20a (12) will have little effect. Waste and practices essentially dishonest are inherent in the very form of such railroad organization. Labor is and will continue inefficient and unduly expensive until the waste, extortions and 'honest graft' at the top are eliminated.

"People differ as to the prospects of success or failure of this curious and disjointed attempt to make a national highway-carrier system out of state-chartered corporations subject to the so-called regulation of a national tribunal and more or less interference from forty-eight state bodies. I am personally not hopeful. The results since March 1, 1920, are hardly less than appalling. I find no sign of economy, hardly a sign of efficiency. But the experiment should be tried fairly and with entire good faith. The optimists are entitled to their day. Congress has so determined.

"But whether this system be called national regulation or national administration, the old, ever-recurring and always difficult problem of properly proportioning centralized power and administration to localized power and administration remains. The same problem would be present, in but slightly different form, if the railroads were unified and federalized. Big business, whether in public affairs or so-called private affairs, always presents the problem of necessitated centralized administration inconsistent with effective and desirable local control. The conflict is always with us. It is really, on a small scale, the problem of world organization; the world must be organized as a unit; yet it cannot be organized, so far as we now see and believe, except into separate, competing units called nations. Nationalism seems to most of us even more essential to world safety (or at any rate to our safety) than internationalism.

"But, stated as a generalization, the gist of the new transportation act is the greatly increased recognition of our railroads as national and not as state agencies. While it cannot be said that there remains no such thing as intrastate commerce, yet, if the act is sustained as constitutional and enforced according to its obvious intent, there will remain very few intrastate rates or rates made as intrastate by state authority. Section 13 (4) in its broad condemnation of discrimination against interstate commerce, construed with the rest of the act, is intended to give to the Interstate Commerce Commission little less than full control over all rates, interstate and intrastate. This is the necessary, logical result of the national government's undertaking to finance the railroads as national highways and to provide service at cost. The fact that the service-at-cost theory remains muddled and confused with the impossible rate-group theory, does not destroy the validity of my assertion as to the essential nature of the new statute. If approximate equality of rates is found impracticable under this scheme, federal incorporation or other effective means of giving to the nation full rate-making power, will follow. The day of any considerable control over rates by the states is nearly if not quite past. And rightly so; for, as noted above, our railroads are national, not state, highways in essential nature and function. Texas, New York, Illinois, must pay their fair share of the national transportation cost, state powers to the apparent contrary notwithstanding.

"The general situation falls within the familiar principle, as stated by Mr. Justice Hughes in the Shreveport case (Houston, etc., Railway vs. United States, 234 U. S., 342, 350), where he says, referring to the commerce clause:

> It is of the essence of this power that, where it exists, it dominates. Interstate trade was not left to be destroyed or impeded by the rivalries of local governments. . . . The fact that carriers are instruments of intrastate commerce, as well as of interstate commerce, does not derogate from the complete and paramount authority of Congress over the latter or preclude the federal power from being exerted to prevent the intrastate operations of such carrirs from being made a means of injury to that which has been confided to federal care. Wherever the interstate and intrastate transactions of carriers are so related that the government of the one involves the control of the other, it is Congress, and not the state, that is entitled to prescribe the final dominant rule, for otherwise Congress would be denied the exercise of its constitutional authority and the state, and not the nation, would be supreme within the national field.

"Why have we been so slow and reluctant in taking the necessary journey towards unification and federalization? The objections originate from two chief sources: (1) From those who have a narrow, selfish and profit-making interest in the chaos and the confusion—the manoeuvering and the manipulation, incident to the old system and its slow evolution toward order and efficiency. If you look at the salary lists and the expenditures for legal fees, for advertising and for propaganda, you will find adequate explanation of much of the opposition to orderly and effective co-ordination. (2) But there are other objections not narrow, groundless, nor selfishly mercenary; all sound-thinking people have a just distrust and dislike of an enormous bureaucracy. To centralize the management, administration or regulation (the three run into each other) in Washington and to deprive states and communities of all local control over these vitally important, although essentially national, transportation facilities, evokes, naturally and properly, dislike and distrust. California and Oregon are perfectly justified in saying that they do not want to be remitted to the tender mercies of a Washington bureaucracy when they desire new stations, the elimination of grade crossings, changes in the detail of local train service, or some other slight change in railroad service or plant, purely local in its nature. Nor would the states and communities much nearer Washington than California be any more content with a purely centralized control in Washington over local service and facilities. The contention that the state public utility boards should continue to exist and to function, as against the ever-increasing domination of the federal government, is an indication of perfectly wholesome life.

"Dimly, and in my view with utter inadequacy, the transportation act recognizes the desirability, if not the necessity, of co-operation between interstate and state authorities, when dealing with the railroad problem. Section 13 (3) provides as follows: * * *

"The authority of the federal government to control state rates has been flatly denied by the states of New York, Ohio, Illinois, Missouri, Nebraska and several other states, and a number of cases brought under the foregoing statute are now pending before the Interstate Commerce Commission. New York says the passenger from Albany to Buffalo shall pay 2 cents a mile; the United States says he shall pay 3.6 cents a mile. Which is to rule?

"The fact that the state commissions may accept invitations from the Interstate Commerce Commission to 'confer' with them, and 'hold joint hearings' with them, and to 'co-operate' with them in some ambiguous and ineffective way, will not, in my opinion, meet either the desires or the real needs of the local communities. No power is given the state commissions to decide or to help decide anything. Their presence at 'joint hearings' is likely to be purely ornamental. What is needed, now that the railroads are recognized as being essentially national in nature and function, is that there shall be a delegation by the nation to the state officials of national power, together with a guarded but adequate right of review by the central national tribunal if and when the state commission really disregards national right and interests. It is not enough that the state commissions should, as of grace, exercising state powers and only state powers, be permitted to confer and co-operate (whatever those words may mean) with the national commission. Dealing with a problem which is in essence national, state commissions ought, if possible, to be given federal powers for local use. There has been much discussion of having regional interstate commerce commissions. This is a recognition of the need of local knowledge of local conditions and the recognition of distrust that arises in communities when problems and needs largely, if not essentially, local, are remitted to Washington for long-distence, long-time, big-expense dealing. Moreover, the Interstate Commerce Commission is so overloaded and overworked that relief in some way must be found, and soon. At least half of their time and energy is now wasted on matters that ought not to trouble them.

"Under section 6 of the selective service act of May 18, 1917 (U. S. Comp. Stat., 1916, Supp. 1919, vol 1, p. 526), I find a legislative enactment of an idea concerning which I have been for some years thinking. To that section and the authorities upon

which it is based, I want to direct your attention. For reference to many of the authorities I shall discuss I am indebted to the courtesy of General Enoch H. Crowder, to whom, as I understand, a large part of the credit for the enactment of, and the enormously efficient performance under, the selective service act is due. Section 6 provides:

> The President is hereby authorized to utilize the service of any or all departments and any or all officers or agents of the United States and of the several states, territories, and the District of Columbia, and subdivisions thereof, in the execution of this act, and all officers and agents of the United States and of the several states, territories, and subdivisions thereof, and of the District of Columbia, and all persons designated or appointed under regulations, prescribed by the President whether such appointments are made by the President himself or by the governor or other officer of any state or territory to perform any duty in the execution of this act, are hereby required to perform such duty as the President shall order or direct, and all such officers and agents and persons so designated or appointed shall hereby have full authority for all acts done by them in the execution of this act by the direction of the President.

"Under this act, and in my opinion largely as a result of this happy co-ordination of national and state powers, the American people gave in 1917 the greatest exhibition of efficient national power ever given at any time by any people. The registration and enforcement of the draft act demonstrated a nationalized power of organization that amazed even the most optimistic believers in America and accomplished Americanism.

"This section, as will be seen, is grounded upon the proposition that the national government may delegate to state officials the performance of national functions. Not improbably this particular delegation may be well grounded upon the war powers. I pass as immaterial, for present purposes, that aspect of the proposition. But the question still arises whether, apart from war powers, the United States may, either as of compelling right, or with the assent of the states, delegate national functions to state officials.

"It is obvious that, now that railroad-carrier transportation has by Congress been asserted to be essentially a national function, if Congress has the power to remit questions which ought to be primarily determined locally to state utility boards with a guarded power of review in Washington, whenever a Shreveport or analogous case arises, that the problem of regulation or administration, or both, would be enormously simplified. I have reached a reasonably confident conclusion that that may be done and that therefore there is no adequate reason for providing for regional interstate commerce commissions.

"I recognize that the suggestion that state utility boards shall act under national power and subject to revision by a federal commission, will not be altogether agreeable to some who hold strong—perhaps sound—views as to state rights. But the state utility boards should realize that their functions as to our railroads are sure to decrease unless they acquire new leases of power from the national government. Whether we like it or not, state functions as to railroad organization, administration and regulation are certain to diminish almost to the disappearing point. Practically, therefore, what I am trying to work out is a plan to keep in the hands of state officials a large part of the powers which they have hitherto exercised, by having those powers delegated to them from the real and ultimate source of railroad-control, to wit, the federal government.

"The attitude of the state commissions toward the federal commission should be 'Morituri salutamus,' else ought they to assert the real truth that they are better qualified in their respective states there to exercise federal power than either the central or any regional federal commission can be.

"I think the state utility boards are not only likely to be of a personnel superior to that which would be obtained for regional Interstate Commerce Commissioners or subordinates thereof; but, what is more important, the fact that they are state-selected and state-resident will make them more responsive to local rights and needs, and their decisions more satisfactory to the communities affected thereby. But I repeat, there must be a full adequate power of review in order to enforce the paramount national right. A few reversals of obviously discriminating decisions of state utility boards would produce balanced conclusions. With an audience like this I need not amplify.

"I turn now to the authorities and their significance:

"The most elaborate discussion of the question as to whether Congress may lawfully delegate federal functions to state officials is found in the case of Levin vs. United States, 128 Fed., 826. This was a decision in February, 1904, by the Circuit Court of Appeals for the Eighth Circuit, Judges Sanborn, Thayer and Hook. In Judge Sanborn's learned and lucid opinion are cited and reviewed most of the earlier cases.

"Levin was convicted of having procured aliens to obtain fraudulent naturalization certificates from a Missouri state court. This judgment was attacked on the ground that the state court had no constitutional jurisdiction to naturalize aliens. The Constitution of the United States provides that Congress shall have power 'to establish a uniform rule of naturalization.' The admission of aliens to citizenship is a judicial function. Spratt vs. Spratt, 4 Pet., 393. It follows that the Missouri court had exercised a judicial function under a federal statute. It was contended that Congress had no power to delegate judicial functions to a state court—partly because of the general relations between the state and the nation, and partly because the Constitution provides that 'the judicial power of the United States shall be vested in one Supreme Court and in such inferior courts as the Congress may from time to time ordain and establish.' (Article 3, section 1.) As of course the Missouri court was not ordained and established by Congress, the argument was that Congress could not empower it to exercise a judicial function concerning a federal right, to wit, naturalization.

"But on careful review of the authorities this contention was not sustained. A statute under which state courts were authorized to naturalize aliens was passed in 1790 by a Congress, various members of which had been members of the constitutional convention. See 1 Stat., 103, 414. This was, as was held by Judge Sanborn, practically 'contemporaneous interpretation of the provisions of the Constitution relative to this subject by those who framed it.'

"But the distinction has been made between duties imposed by the nation upon state officials and permissive authority given either to judicial or to administrative officials. As to naturalization, involving judicial powers, the Massachusetts court held in Stephens, Petitioner, 4 Gray, 559, that an act of the Massachusetts Legislature prohibiting courts of Massachusetts from entertaining applications for naturalization was constitutional. The opinion was by Chief Justice Shaw. In effect, he held that the federal Constitution imposed no binding obligation upon the states to require their courts to deal with naturalization, a federal function. I find no case in which it has been flatly held that Congress may compel state courts to entertain applications for naturalization. Possibly the weight of authority is that such applications are to be regarded as permissive only. In Holmgren vs. United States, 217 U. S., 509, the principal question was whether Holmgren could be legally convicted in a federal court for a false oath in naturalization proceedings had in a state court. Although the case was decided in 1910, six years after the decision in the Levin case, the Levin case is not cited in Mr. Justice Day's opinion. But speaking for a unanimous court as to naturalization, Mr. Justice Day says, 'Unless prohibited by state legislation, state courts and magistrates may exercise the powers conferred by Congress under such laws,' citing Stephens, Petitioner, 4 Gray, 559. This obviously implies an option in the states to accept or to reject the federal function.

"In Second Employers' Liability Cases, 223 U. S., 1, 55, 59, the court dealt with the question as to whether the state courts of Connecticut could decline cognizance of actions to enforce rights arising under that federal employers' liability act, and answered the question in the negative. The Supreme Court said that there was not then involved any attempt by Congress to enlarge or regulate the jurisdiction of state courts or to contral or affect their modes of procedure, but only a question of the duty of such a court, when its ordinary jurisdiction as prescribed by local laws is appropriate to the occasion and is invoked in conformity with those laws, to take cognizance of an action to enforce a right of civil recovery arising under the act of Congress and susceptible of adjudication according to the prevailing rules of procedure.' This case certainly goes a long way in asserting power of Congress to compel state officials to enforce federal rights falling within the general cognizance of the official powers and duties accruing to such officials under state law.

"The opinion cites Claflin vs. Houseman, 93 U. S., 130, 136, 137, quoting therefrom:

> The laws of the United States are laws in the several states and just as much binding on the citizens and courts thereof as the state laws are. The United States is not a foreign sovereignty as regards the several states, but is a concurrent, and, within its jurisdiction, paramount sovereignty.

"In Claflin vs. Houseman (1876), the opinion of the unanimous court was written by Mr. Justice Bradley, and the chief point (decided in the affirmative) was whether an assignee in bankruptcy could sue in the state courts. The reasoning, with the citation of earlier opinions, is most learned and illuminating.

"There is a considerable number of other instances of the delegation of federal power to state officials. Revised Laws, sec. 1634, provides that there shall be 'appointed in each state an adjutant-general, whose duty it shall be to distribute all orders from the commander-in-chief of the state to the several corps.' Possibly it might be argued that this statute is grounded upon the peculiar provisions of the Constitution as to the relations of the federal and state government concerning the militia. But under Revised Laws, sec. 3066, federal duties are imposed upon justices of the peace and other magistrates appointed under state authority. Compare Dallemagne vs. Moisan, 197 U. S. 169, where the question arose as to whether the police of San Francisco could make a valid arrest of a seaman belonging to a French vessel. Mr. Justice Peckham said, as to the contention, that a federal treaty could not impose a duty upon a state officer:

> It has long been held that power may be conferred upon a state officer, as such, to execute a duty imposed under an act of Congress,

and the officer may execute the same, unless its execution is prohibited by the Constitution or legislation of the state. Citing Prigg vs. Pennsylvania, 16 Pet., 539, 622; Robertson vs. Baldwin, 165 U. S. 275.

"In Robertson vs. Baldwin, Mr. Justice Brown reviewed many of the earlier authorities, and held that Congress may constitutionally confer upon said justices of the peace power to arrest deserting seamen. Other cases dealing with functions imposed or permitted are quoted in the footnote.*

"On these authorities it is, I think, entirely safe to conclude that Congress may constitutionally empower state utility boards to perform federal functions concerning the regulation or administration of a national highway-carrier system. There may be arguable doubt as to whether such state tribunals could be compelled by act of Congress to perform federal duties. The decisions in the Court of Appeals in the Levin case and of the Supreme Court in the second employers' liability cases go far to sustain the proposition that such compulsory performance of duties may be validly imposed.

"Practically, permissive power would probably be enough. The interest of the states in retaining, so far as possible, control over what are mainly local matters would induce the states to permit their public utility boards so perform federal functions. The alternatives of either having to go to Washington for a determination of practically all railroad problems, or having a regional interstate commerce commission and ramifying federal bureaucracy—certain to be less responsive to local needs and desires than state commissions—not to mention the expense and complexity—would, I think, effectually prevent the states from taking the position that the Massachusetts legislature took in 1855 concerning naturalization in the state courts. That act was probably a temporary ebullition of know-nothingism or pseudo-patriotism of the time, and long ago repealed.

"Somewhat more concretely, I think the federal railroad statutes should provide that commutation rates around our larger cities, the elimination of grade crossings, the details of local service as to the time and number of trains, and their stopping at stations, and the functions otherwise necessarily shortly to be deputed to local examiners of the Interstate Commerce Commission, etc., etc., should primarily be determined by the state public utility boards, acting for the federal government, with a guarded power of review or appeal to the Interstate Commerce Commission or to some division thereof if, and when, the local determination is found to involve, substantially, methods or practices or financial results, of national interests. So long as the railroads are operated by separate, state-chartered corporations, a right of appeal to the Interstate Commerce Commission might be reserved to such corporations. If, and when, the railroads are unified and federalized, a regional official might be authorized to appeal to the federal commission from the order of the state commissioners. Moreover, the Interstate Commerce Commission should, of its own initiative, retain power, on certiorari or analagous method, to bring before it for review or modification any record of proceedings before a state tribunal requiring, in the interests of uniformity or because of national prejudice, federal revision. Such revisionary power would be easily effective, both for uniformity and to prevent, for instance, state tribunals from making communtation rates around large cities so low as unduly to prejudice the national financial structure, or from building inordinately ornamental and expensive terminals. Such power on its own initiative would be far more effective than that which the Supreme Court now exercises on certiorari over the decisions of the circuit courts of appeals; for the Supreme Court can issue certiorari only on the application of one of the parties litigant.

"Without further present elaboration, I venture the confident assertion that there is no great difficulty in drafting a statute which will easily vest important, desirable, and much appreciated local federal functions in state utility boards, without substantially encroaching upon the effectiveness and uniformity of all that ought to be centralized control in Washington by the Interstate Commerce Commission."

After the address of Judge Anderson, Commissioner Jackson, of Wisconsin, said he appreciated the frank expression of Judge Anderson's views, although they no doubt differed from those entertained by many of the state commissioners. He also took occasion to say that the state commissioners were not likely to take the view that railroad service was not showing improvement in efficiency and economy and that the future of the railroad situation was hopeless. He offered a resolution tendering the thanks of the convention to Judge Anderson and this was unanimously adopted.

### Report on Public Ownership and Operation

Considerable discussion followed the reading of the report of the committee on public ownership and operation by P. J. Lucey, chairman of the committee, member of the Illinois commission. Mr. Lucey explained that he had written the report himself and had then sent it to the other members of the committee for approval. George R. Van Namee, of the Second District, New York commission, declined to sign the report, Mr. Lucey explained. The report, which follows, was finally "received," but not "adopted:"

"The question of private ownership with regulation as against public ownership without regulation should no longer be considered by intelligent investigators an open question.

"We think it may be admitted as a general proposition that public ownership and operation has failed wherever it has been properly tested. We recognize the fact that in some special locations public ownership and operation may appear to be successful, but we hold that if the real facts might be ascertained and the same test applied to the publicly owned and operated utility as is applied by regulatory bodies to the privately owned and operated utility, the general result will apply in all instances.

"We need no better illustration of the result of the attempt of the public to operate utilities than the recent operation of the railroads by the United States government. These roads were taken over pursuant to the war power of the government and operated by the Director General with such autocratic power and independent irresponsibility, that the financial and other business interests of the country wondered what, if any, limitations really existed and in what forum conflicting claims of right might be adjusted, if indeed there was any forum of appeal from the will of the supreme operating authority. In fact, or at least in practice, there was no limitation on the power of the Director General and he operated these utilities as a unified system with full power and authority to make and change all rules and regulations to accomplish the most beneficial results. The rate of wages and the rates to be paid by the shippers and the rate of return to the owners of the property were arbitrarily fixed by the national government and a full and free opportunity was given to test the competency of public operation in the interest of the public and the efficiency of the service so rendered.

"The result is common knowledge. As the necessity which gave rise to the assumption of federal control and operation approached a conclusion, the question of returning the roads to their owners, and the manner and method of turning them back became such a complicated question that the situation became similar to that of the man who had hold of the bear—he was unable to hold on and feared to let go. They came back to their owners in a broken and disorganized condition and it was necessary for the national government to create a fund which might be loaned to the railroads for the purpose of rehabilitating them and restoring them somewhat to their normal condition before government operation began.

"In addition to which, since they have been returned to their owners there have been increases in freight and passenger rates until the public is today paying the highest rate for freight and passenger transportation in interstate traffic that was ever charged by the railroads and more than the most optimistic railroad president dreamed would ever be their lot within so late a period as five years ago. Is there any reasonable and thinking man who has paid the slightest attention to the subject matter who can be heard to maintain the doctrine that governmental operation, not to speak of governmental ownership, was a success?

"In the field covered by the other utilities, street cars, electric light and power, telephone and telegraph, gas and water, there has not been the same opportunity to make the character of test as was made with the railroads. These latter utilities came upon the field at different times through the process of invention and being a new enterprise and a new business, each in its turn was obliged to create the demand for the product it served or the service it rendered. In the early years the public was not interested in either.

"With such utilities as required municipal permits or franchises the matter was conducted by the officers of the utility representing the demands or necessities of the utility company on the one hand and the municipal bodies controlling the use of streets and public avenues and representing the public at large on the other. Each party was dealing with the other to secure the best advantage possible for the interest which it represented. There was no independent, disinterested and honest effort to ascertain what should be a just and reasonable rate to which the utility should be entitled and at the same time protect the public, until the advent of the regulatory commissions.

"When the commissions took hold of the situation the result in many instances was a lowering of rates and the commissions were correspondingly popular. Since the outbreak of the war, with the enormous increase in the cost of labor and all materials entering into the construction and operation of utilities the commissions have been confronted with the necessity of meeting these advanced costs in order to permit the utilities

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*State vs. Wells, 2 Hill (S. C.), 237; State vs. McBride, 1 Rice (S. C.), [illegible]; Davison vs. Champlin, 7 Conn., 244.

As to permissive authority to administration officials, see sec. 7 of Grain Standards Act, 39 Stat., 482; sec. 5 of Quarantine Act, 20 Stat., [illegible]

Compare also in re Spangler, 11 Mich., 298; In re Griner, 16 Wis., 447; Druecker vs. Salomon, 21 Wis., 628, 638; Allen vs. Colby, 47 N. H., [illegible]

As to functions of notaries public and other magistrates, see, Rev. Laws, secs. 563, 1014, 1015; Ableman vs. Booth, 21 How., 506; Robb vs. Connally, 111 U. S., 624.

As noted above, some other illustrations of the same general principle are found in Judge Sanborn's opinion, 128 Fed., 826.

to function, and in different sections of the country there has originated a demand for municipal ownership and public operation on the part of those who think or believe that the commissions should compel or seek to compel the utilities to operate at the rates which were prevalent prior to the outbreak of the war.

"It seems remarkable that any sane man with a knowledge of the increase in all costs of living should think or expect that utility corporations might be an exception to the general rule. No reasonable man has thought so. The operation of these general laws has again produced the political agitator who has sought and is seeking to make political capital out of present necessities. We all know him and we all understand his motives. It is remarkable that the public at large should not also recognize the impossibility of doing business today at the cost of doing business prior to the war. It is remarkable that men, honest and reasonable in the conduct of their own business affairs, will accept as gospel truth the perverted, even dishonest statements of the demagogue who seeks to climb into power and prestige by denouncing the increased rates allowed to utility corporations by the state and national regulatory commissions. It is remarkable that the public has not sufficient appreciation of the constitutional limitations and the constitutional restrictions placed upon the attempted confiscation of private property for public use.

"It is possible that in some communities, indeed in some states, the laws creating the regulatory commissions may be repealed by reason of the weakness of the legislative power to withstand the demands of the demagogue, but in those communities and in those states we believe the state and federal courts will protect the rights of those who have invested their money in the securities of the utility corporations, and compel the authorities to permit the collection of just and reasonable rates. The question which confronts such communities and states is the question whether they will permit the regulation and control of these vast interests by regulatory bodies created under state law, or whether they choose to permit the utilities to establish their own rates as just and reasonable, protected by the injunctions of the state and federal courts.

"It is most natural in this condition of affairs that the demagogues and the dreamer should invoke the doctrine of public ownership and public operation. We have seen it made the issue and apparently honestly urged by men reasonable and sane in all other matters, but who hope by some process of legerdemain to continue to pay high constructive costs, high wages and other advanced costs of operation, and yet continue to operate the utlitities at the same price for the product or service rendered, as was in vogue prior to the World War. Some are honest we are forced to believe and others are not.

"The argument is generally advanced that in the early construction days of the railroad and other utilities the public was defrauded by wildcat financing, and as a result thereof, public opinion is prejudiced against utility corporations in general. These charges may or may not be true and it is not necessary for the consideration of this question to review them. We know that under the present system of public regulation these abuses can no longer exist. We know that as a result of the depreciation in all values resulting from the Great War that any 'water' which might have existed in these properties has been squeezed out and cannot get back in.

"We have noted many changes in the functions of the government during these later years and many enterprises and duties have been assumed by the state and national governments which were not dreamed of by the founders of our system, and it may be necessary to continue the experiments even to the extent of taking over the utility corporations in order to convince the public at large that such is not the proper method and manner of operating them.

"It stands to reason that no business enterprise dependent upon the varying changes of political thought can be operated by the public in as efficient, methodical and careful a manner as can a similar business enterprise managed by a body of men who have their capital invested therein, or who represent those who have invested their fortunes therein.

"It may be necessary in order to further demonstrate this fact that the public will demand a further extension of the experiment of municipal ownership or municipal operation. It is being tested in some of the European countries today, it is demanded in this country by those who would destroy our governmental system and substitute some system similar to that which is said to operate in Russia. There are two classes of people opposed to private ownership with governmental regulation. One is made up of the classes of the communist, the anarchist and all others who follow the divers and various governmental vagaries with which they seek to supplant our constitutional government. The other general class is the dreamer, the visionary, the professor who deals in ideals but not facts, and who is opposed to private ownership and governmental regulation because they both feel that should this process fail nothing will remain but public ownership and public operation, and we believe they are correct in that view.

"Destroy private ownership with public regulation and the next step is government ownership and government operation. When that time comes, if it does, our system of government will have changed to meet it. We will not be living under the system of constitutional government which we now enjoy because these properties cannot be taken over and honestly paid for through any series of bond issues or otherwise, and operated as efficiently and economically as they are now operated in the hands of their owners. In order to take them over and operate them at a less cost than their owners can operate them, it will be necessary to confiscate all or a large portion of the actual value of these properties, and if that can be accomplished it will be notice to the world that our constitution has changed, and that our courts are no longer able or capable of protecting private property from public confiscation. It is no less immoral to take private property for public use without making just compensation therefor than it is to take private property for private use under the same or similar circumstances.

"We believe that the present system of private ownership and private operation with public regulation, as is now the custom in this country, is the proper, logical and indeed the only just and honest manner of conducting the public utility business of this country."

Commissioner Smith of Michigan said he would dislike to see the association go on record as standing behind all that was in the report on public ownership and operation. Commissioner Flad of the Missouri commission said he opposed the report because he believed in public ownership of utilities—he believed public ownership was the "ultimate step" that the state and national governments must take. He said he hoped the report would be rejected in "toto."

James Cansler of the South Carolina commission and George P. Pell of the North Carolina commission urged adoption of the report. A. L. Freehafer of the Idaho commission said that, in view of the fact that it would not be possible to reach an agreement on the report, it should be received and placed on file. He said he did not believe that the association should go on record on the questions involved in the report.

Mr. Lucey, speaking further in support of the report prepared by him, said the best test of government operation had been made under federal control of the railroads. He read at length from an editorial in a recent issue of the Saturday Evening Post on the bomb explosion in Wall street and then referred to the recent political campaign in Illinois, in which he charged, in effect, that political demagogues had urged abolition of the Illinois state commission because it had permitted public utilities to increase rates. He said the Illinois situation would bear watching, but he did not believe the state legislature would carry out the program advocated by the mayor of Chicago, because the Republican candidate for governor, backed by the Chicago mayor, ran over 400,000 votes behind Harding. He said he believed the new governor would not put into effect the "program of confiscation" advocated in the campaign. He said the fact that the successful Republican candidate for governor ran so far behind Harding indicated that there were many men and women in the state who did not approve of the Chicago mayor's program.

Commissioner Jackson of Wisconsin, chairman of the committee on state and federal legislation, submitted the report of that committee, covering briefly the history of the enactment of the transportation act. He said the committee looked for a favorable judicial determination of the intrastate rate question which would sustain state regulation of rates. The report was received and filed.

Commissioner Smith of Michigan discussed briefly questions that had arisen in his state with respect to construction and abandonment of railroads wholly within the state since the passage of the transportation act. He called attention to several situations wherein the railroads contended that the Interstate Commerce Commission was supreme with respect to construction of or abandonment of railroads within the state. He did not answer the questions raised, but said he was seeking light and that a great deal of uncertainty had been injected into the regulation of such matters by the transportation act.

### Address by Aitchison

At the morning session November 10 Commissioner Aitchison delivered the following address on the car situation:

"Of all the tasks of the regulatory commission, none are more thankless than those which come in floods when the railroads of the country cannot transport traffic currently as offered. These 'car shortages' have long occurred, recurred, and at times persisted over considerable periods, in varying degrees of intensity. Their perniciously repressive effects upon the prosperity and growth of the individual, the locality, the states and the nation, are all too well known. No sin of a railroad is regarded as so heinous as the omission to perform the primary duty of a common carrier—to accept and transport commodities as offered in the usual course of business. Such an omission inspires sullen resentment, which in times past has often burst forth into fierce flames. Then those who depended upon the continuance and prosperity of industry have turned as a last resort to public authority and to the penalties imposed by legislation, in the

expectation that in some manner by the exercise of the powers of the law, missing facilities would be supplied promptly and that the carriers would be compelled with all speed to resume the full and adequate performance of all their duties. Most of the state commissions created in 1905 and 1907 owe their origin, in part, at least, to the despair of a public, which, unable to move its commodities, and thereby confronted with most serious consequences, turned to the regulating body as a possible means of obtaining relief. The many statutes as to demurrage and reciprocal demurrage, and as to minimum speed for transportation, enacted in the agony of these periods of distress, all evidence the hope that by the adoption of legislation highly penal in character a means for insuring adequate service could be found.

"But the problem was incapable of such solution. No waving of a legislative wand by a state commission could bring cars into being as expected; nor could the fiat of government move trains over tracks or through terminals fully occupied with other cars. State legislation could not displace the laws of physics. And, it soon developed that because of the essentially national character of commerce and traffic which mainly interested the residents of the states, the relief which the state could give was either wholly inadequate because of the small compass of the territory in which it could be made operative, or else was totally void because it necessarily infringed upon the execution by Congress of the duties and powers committed to it. Again, when the attempt was made to enforce the penalties provided by state legislation, it was found quite paradoxically that the very conditions of emergency which gave rise to the complaint and damage afforded a perfect defense to the carrier, which ordinarily was able to show that the conditions were unusual and could not have been foreseen, or were beyond its sole power to control.

"It must be confessed, after long experimentation, that state legislation has not prevented the repetition of these conditions of distress; and no state commission, however zealous in the discharge of its duties, or well fortified by drastic state legislation, has been able to do more than slightly mitigate the effects of the frequently recurring situations commonly called car shortages.

"And yet these convulsions of commerce have been followed by periods of comparative calm, when the traffic offered was transported, and the rail carriers were assiduous in seeking business. Yards and sidings which had been clogged with loaded cars awaiting movement became filled with empty cars stored because unneeded. Again, it has been observed in recent years that in particular sections of the country there was a plethora of cars, which could not be made empty or be moved promptly enough to give relief to industry which demanded an opportunity to load them and send them on their way. It has also been observed that in a particular section of the country there were more cars than needed, but they were of a kind unsuited to the needs of that section; and that the cars particularly needed were in another locality, where, perhaps, they were likewise an annoyance to both carriers and shippers. It has often been made to appear that the supply and movement of cars has been limited by some cause wholly distinct from the number or location of the cars, such as the condition of the motive power, fuel supply, lack of track and terminal facilities, or labor disturbances. The thoughtful man has ceased to think of these recurring conditions as car shortages, except as that term may be used as a convenient short expression for that which is the practical result of many different causes which may exist in varying degrees and in different combinations to bring about a partial or complete failure of transportation.

"The national government has at all times been slow to enter upon the field of regulation of common carriers by railroad, and has only done so when the way has been blazed in advance by the states. When state action has seemed to suffice, the federal government has commonly omitted to displace the states. State legislation as to safety appliances, hours of service, the reasonableness and fairness of rates, the issuance of securities, and permission to construct or abandon lines, has preceded general action by the Congress upon these subjects. Only because of the essentially national character of the transportation involved, and because of the impossibility of proper or adequate treatment under the limitations of state powers, has the national government exerted its authorized powers. This has been particularly so as to matters of service, which, for various reasons of policy, have until recently been left practically wholly with the states. There never has been any doubt of the ability of Congress to undertake to require good and adequate service by carriers engaged in interstate and foreign commerce to the extent it might choose to exercise the power; or that the power might as appropriately be exercised in the case of matters of service directly as in the case of matters of rates and safety, both of which indirectly affect the character of service afforded. But even during federal control, when the national government might exercise its powers as operator of the systems of transportation as it chose, it was deemed advisable to leave the determination of many matters of policy to local authority. Not until the Esch car-service act, approved May 29, 1917, did Congress undertake to prescribe a means for the requirement of adequate service upon interstate carriers, and the operation of that act was halted almost before it started by the inception of federal control.

"The transportation act, 1920, became effective coincidently with the termination of federal control and with the resumption of the operation of the railroads by their owning corporations.

"By it, Congress undertook to do two things: (1) For the normal needs and in general, the act requires the carriers to establish, observe and enforce just and reasonable rules, regulations and practices with respect to the use, control, supply, movement, distribution, exchange, interchange and return of locomotives, cars, and other vehicles used in the transportation of property and with respect to the supply of trains by any carrier by railroad subject to the interstate commerce act. Unjust and unreasonable rules, regulations and practices with respect to such car service are prohibited and declared to be unlawful, and a means is provided whereby the Commission upon complaint, or upon its own motion, may establish just and reasonable rules, regulations and practices. The act elsewhere provides the means whereby any regulations or practices made or imposed by authority of any state may be brought into harmonious relation to those applicable to interstate and foreign commerce so as to remove any undue advantage, preference, prejudice or discrimination against such commerce. (2) Congress has also anticipated extraordinary conditions and has provided in the act as a remedy that whenever the Commission is of the opinion that a shortage of equipment, congestion of traffic or other emergency requiring immediate action exists in any section of the country, it may with or without complaint, answer or hearing, give just and reasonable directions with respect to car service without regard to ownership as between the carriers; require the joint or common use of terminals, including main line tracks; give directions for preference or priority in transportation embargoes, or movement of traffic under permits, at such time and for such periods as it may determine; and give such just and reasonable directions with respect to the handling, routing and movement of traffic of carriers by railroad as in the opinion of the Commission will best promote the service in the interest of the public and the commerce of the people, and upon such terms as between the carriers as they may agree upon or, in the event of their disagreement, as it may, after subsequent hearing, find to be just and reasonable.

"Even in so exercising its undoubted authority and in meeting its clear duty to legislate in the interest of the great bulk of the commerce of the nation, Congress provided:

> That nothing in this act shall impair or affect the right of a state, in the exercise of its police power, to require just and reasonable freight and passenger service for intrastate business, except in so far as such requirement is inconsistent with any lawful order of the Commission made under the provisions of this act.

"There seems to be plenty of room for the fullest exercise of all the knowledge and skill which can be brought to bear upon matters which relate to the adequacy of service, and so long as there is complete harmony of action and policy, and the effect is to "best promote the service in the interest of the public and the commerce of the people," the means whereby this end is to be attained may be considered as immaterial. It is obvious, as a common-sense proposition, that there must be complete harmony of action and policy, or this end cannot be attained. Practically, we can have room for one policy in respect to the distribution of cars in this country, or we might attempt to enforce forty-eight; but we cannot have forty-nine different policies. One fact is clear and outstanding—that as to interstate and foreign commerce using the lines of common carriers by railroad, Congress has undertaken to require from every carrier the furnishing of safe and adequate car service, and the establishment, observance and enforcement of just and reasonable rules, regulations and practices with respect thereto, and has prohibited the observance of any other. The power to require safe and adequate service is analogous to the power to require safe facilities and safe working conditions for employes; and the requirement of justness and equality in the distribution of available equipment is closely akin to the requirement of non-preferential rates for the transportation of articles moving in such cars. Indeed, with respect to matters of car service, the necessary extent of the federal power seems even more clear than as to rates.

"Cars and trains are not set aside for exclusive use in moving either state or interstate traffic, but are used interchangeably and concomitantly in moving both. Can it be doubted that there is such a close and direct relation or connection between the two classes of traffic, when moving over the same railroad, as to make it certain that adequate service for interstate traffic will be promoted in a real and substantial sense by applying the requirements of the transportation act to vehicles used in moving the traffic which is intrastate as well as to those used in moving that which is interstate? The answer to this question, as doubly stated, must be in the affirmative, and the principal question must be answered in the same way. And this is so, not because

Congress possesses any power to regulate intrastate commerce as such, but because its power to regulate interstate commerce is plenary and competently may be exerted to secure adequate service for persons and property transported therein, no matter what may be the source of the impediment which tends to prevent it. That is to say, it is no objection to such an exertion of power that the impediments to be avoided arise, in whole or in part, out of matters connected with intrastate commerce.

"So that we have this situation: The states left in the exercise of their police power, able to require just and reasonable freight and passenger service for intrastate business, except so far as such requirement is inconsistent with any lawful order made by the federal Commission, in the general prescription of just and reasonable rules governing car service, or specially in case of emergency. When the conflict does occur, in the interest of all the states, there can be no doubt that one policy must prevail.

"This is in one aspect an academic consideration, but in another view, is vital. In times of car shortage the treatment must be along lines of preference, by determining which of many crying needs is first to be met with the inadequate supply at hand. The states are not well equipped with legislation to meet such a situation. State legislation runs along lines of prevention of discrimination, rather than how it may be permitted or controlled. The other aspect is the grave danger of serious conflict between the states themselves, which has already cropped out. To illustrate: The western states require cars for the movement of accumulations of grain, and the surplus of those cars is in other states, where nothing but federal authority can compel them to be moved to the grain fields. Simultaneously, the eastern states must have returned to them the surplus of open top cars located in the western states. If the eastern states attempt to retain to themselves the box cars which happen, at the time their regulation is attempted, to be located within such states, grain will not be moved in the west. And if the western states should insist that the open top cars which chance to be located within their borders must be kept there, for instance, to aid in an extensive road-building plan, then coal will not be moved either locally or in interstate commerce in the eastern states.

"If a coal producing state, through a fuel commission or administrator, attempts to retain to itself an undue amount of open top equipment, manifestly it may prevent free intercourse and commerce between the states, the achievement of which was a primary reason for superseding the Articles of Confederation by the Constitution. It is intolerable that a state, through the control of the instrumentalities of commerce, should proclaim non-intercourse with other states; and a state which attempted such course would inevitably itself be the subject of similar action on the part of other states. In self-protection each state would be compelled to impound rolling stock and release it to its neighbors only as a result of some compact or quid pro quo. To state the results of the attempt to have forty-eight policies is to demonstrate that, aside from all questions as to the powers of the federal government under the Constitution, there must be a general policy, which shall bring about the best service for each and all of the states. But the delegation of control over interstate commerce cannot thus be waived aside. We are operating under the Constitution, and not under the Articles of Confederation. The responsibility has been lodged with Congress, and Congress has met that responsibility by suitable legislation.

"All that has been said is intended to show that, instead of there being cause for confusion and discord, there is every reason, practical and legal, why the federal and state authorities should face the service problem squarely, and each act in the public interest within its appropriate sphere of activity, to obtain that harmony and concord of action without which our transportation facilities never can do the work they will be called upon to perform. The task is too great to be performed from Washington. There is so much to be done that probably the needs of many of the states cannot be met from the state capital. All regulating authorities have their part, and that part calls for full and cheerful co-operation between them. But without the fullest measure of co-operation with the regulating bodies on the part of the carriers, their officers and employes, and the shipping public, regulation will be futile in dealing with emergency transportation situations. This must require at times a subordination of local views and local interests. In times of shortage, all cannot be served. But in times of famine it is infinitely better that an equitable system of rationing should be observed, than that we should revert to the power of the strongest to determine who should be fed and who should starve. In the transportation crisis from which we are emerging it has been shown beyond cavil that, by means of hearty co-operation between the state and federal authorities, the carriers and the shippers, coupled with philosophical forebearance, we can pull through the gravest sort of emergencies.

"Of course, all are familiar, in a general way, with what has occurred since the termination of federal control. March 1, 1920, found the roads returned to their owners and the Interstate Commerce Commission suddenly vested with enlarged duties and responsibilities with respect to many subjects, none of which were of greater immediate importance than those pertaining to adequate service. The carriers found their cars widely dispersed. They had been used for more than two years as a part of a general pool. Repairs had been made in many cases at places other than the shops which were designed for the repair of particular classes of equipment. The stress of war conditions had led to the use of equipment in a most intensive manner, and the time was at hand when much of rolling stock was due for thorough repair. Railroad labor was in an uneasy and dissatisfied frame of mind, with many pending wage demands still unadjusted, and had opposed the return of the roads to their owners. A vast amount of grain remained on hand from the preceding year awaiting movement, held in part for financial reasons, and with changed financial conditions the immediate movement of this grain was demanded. The year commenced with no stocks of coal left over from the preceding year. The revival and growth of industry and the large increase of exports made an insistent demand for transportation which, in the aggregate, had never been exceeded during a similar period, the war period not excepted.

"Shortly after the return of the roads, strikes of various classes of railroad employes sprang up sporadically, spread and ramified. Many occurred without warning. The demand of industry for man power to produce tonnage to be transported, reduced the working forces of the railroads, and tended to make it impossible for the railroads to carry that which was so produced. The effect of the withdrawal of this labor from railroads service was wholly disproportionate to the number of men leaving the service. The strikes were most complete in the great gateways and congested terminals, and as traffic was stopped at the terminals and gateways it backed up along the rail lines for hundreds of miles, until a stoppage of all movement seemed probable. The general public will never know how close the rail and water transportation systems of the United States came to a complete cessation of functioning in the industrial heart of the country as the result of the strikes beginning in April, and which continued in diminishing force until midsummer.

"In this emergency the railroad carriers invoked the far-sighted provisions of the transportation act, and sought, with the aid of the Commission, to accomplish in a lawful way such unification of their operation as was necessary to place and keep the transportation system on the plane of highest efficiency.

"In the height of war conditions, the Commission, in December, 1917, called to the attention of Congress the need for unification in the operation of the railroads of the country during the period of conflict, as indispensable to their fullest utilization for the national defense and welfare. The Commission pointed out that this unification could be effected in but one of two ways, either by voluntary action of the carriers effected in a lawful way by the suspension of statutes to the contrary, or by the operation of the railroads as a unit through the President. For war purposes the latter alternative was adopted, with results which are now history. In the emergency which followed the termination of such operation by the President, a no less grave operating situation was present. Indeed, because the stimulus of war was absent, the condition in the spring of 1920 was more menacing to the domestic welfare of the country than it was in the early winter of 1917 when federal control was assumed. But, the situation was met, squarely and courageously, in a business-like way, without political interferences or pressure of any character whatsoever, under the orderly processes of law, by privately operated railroads, directed along consistent lines to secure that unity of object and policy which was the end sought in placing the carriers under federal control during the war. The sum total of cars and rolling stock at the termination of federal control was inadequate to meet the strain which was soon placed upon the transportation system. The effect of the strikes and stoppage of traffic which occurred within six weeks after the roads were returned to their owners, was equivalent to the obliteration of one-third of all the rail equipment of the country suitable for freight carrying service. As the result of the unceasing efforts of railroad operators and employes, with the assistance of the shippers, and under the policy laid down by the Commission and enforced and carried out in details by the carriers individually and through their Car Service Division, the back of the car shortage has been broken, and we are now facing the possibility of a surplus of equipment. A few illustrations may be of interest drawn from the reports of the Class I carriers. The miles per car per day for April, 1919, averaged 21, and in August of that year the average was 24.2. The April strikes in 1920 brought the average for that month down to 19.4; by August, 1920, this had been increased to 27.4. Comparing August, 1920, with August, 1919, the increased daily mileage had the effect of enlarging the available car supply about 288,000 cars. The average number of cars left over and awaiting movement daily at midnight had been brought down, on August 25, more than 71,000 as compared with the average for June, 1920. The number of cars held with railroad material on hand was brought down 25.7 per cent from June 1 to August 22. The daily average of cars held on account of accumulations, which

reached more than 208,000 in April, 1920, was reduced to less than 40,000 on October 22, 1920; and in the same period the average number of cars held daily on account of embargoes was brought down from approximately 26,000 to slightly in excess of 1,000. The average tons per loaded car in August, 1920, were 29.8; and the same month in 1919, 28.0. The added tonnage per car had the effect of increasing the car supply by the equivalent of approximately 105,000 cars. The total revenue freight loaded in cars, January 1 to October 16, 1920, as compared with the same period in 1919, showed an increase of 2,091,421 cars. The total revenue freight loaded, expressed in terms of cars, for the 4 weeks ended October 23, 1920, was 4,002,357; for the same 4 weeks in 1919, 3,888,896, and in 1918, 3,778,862. The effect of the strike conditions and congestion can perhaps better be imagined when it is known that the total movement of freight cars for the 4 weeks ending May 29, was 2,916,916; on October 23, 4,002,357. The relative increase in tonnage transported was about 37 per cent, and the actual increase was at the rate of more than a quarter of a million cars a week. Box cars alone to the number of 129,630 were delivered between June 1 and November 4 to central-western, northwestern and southwestern railroads either on orders placed by the Commission, or upon the direction of the Car Service Division, acting in co-operation with the carriers in carrying out the policy of the Commission.

"But while the situation has thus been met and the menace had been averted for the time being, the situation is still acute in places. What has been done was first aid, and not a cure. The cure can come only with the present equipment being placed in the best possible condition, with suitable additions to rolling stock and motive power, with considerable improvements of terminals, with the additions of passing tracks and the construction of additional main-line tracks.

"These additions to the physical plant will be wholly insufficient without a continuance of such degree of centralized control as will insure a unified national policy and a high degree of co-operation as between the carriers. But even an improved plant, operated substantially as a unit, can not do the requisite amount of business unless it receives the full benefit of localized aid in avoiding every cause tending to stop the fluid movement of commerce. No organizations can so well aid in removing these obstacles as the state commissions, standing, as they do, indifferently between shippers and carriers, the representatives of the power and justness of law, and possessing an intimate and first-hand knowledge of situations within the boundaries of their jurisdictions.

"The present financial situation, coupled with the apparent downward trend of construction costs, makes it seem prudent not to engage upon any undue or avoidable construction program until conditions become more normal, and seemingly there can be no letting down in the intensive use of equipment, to make the existing transportation machine operate at a 100 per cent load factor. The part which has been played locally by the limited number of terminal committees which could be organized in the short time and out of the material at hand, is well known. Upon these committees, headed by a representative of the Interstate Commerce Commission, the carriers, the shipping public and the state commissions have found opportunity for co-operative service. In the interest of good administration it is contemplated that this plan of bringing the activities of federal and state governments, of the shippers themselves, and of the operators of the railroads, into local organizations with an agency of the Interstate Commerce Commission, shall be broadened and continued. In such committees the representatives of the state commissions can be of the utmost service, without in any way detracting from their authority as regulating bodies. The transportation act marks the beginning of a new era in transportation, and the recognition therein of the necsity for the utilization by the federal authorities of the advice, assistance and co-operation of the state regulating bodies is a striking feature of that law, and one which marks a distinct step in advance. Surely the need for such close interaction is most marked with respect to matters of car service, in which the public is best served through a national policy, which must be founded upon a thorough knowledge of local situations, as well as of the comprehensive outlines of the entire plan. Without the general plan chaos would result and nothing could be constructed; but without the plan being carried to completion by attention to its details, nothing will be achieved."

### Funk Questions Aitchison

The address of Commissioner Aitchison on the car situation precipitated considerable discussion going to the question of conflict between the state commissions and the federal body in the matter of regulation of car distribution.

Commissioner Frank H. Funk, of the Illinois commission, declared he could not determine from Commissioner Aitchison's paper what power the Illinois commission has over car distribution, and that the commissioner had stated in one breath that the federal authority was "all powerful" and yet asked co-operation on the part of the state commissions.

"I have come to Washington a number of times for co-operation," said Commissioner Funk, "and to be frank, I haven't seen much evidence of co-operation. After I had analyzed what I had accomplished I found that it represented zero.

"I did get a vague idea that, in time of congestion, the Interstate Commerce Commission would step in, but do I understand that at other times the Interstate Commerce Commission will recognize the powers of the state commissions, and if so, just at what point will we be permitted to resume our functions? This is too big a problem for handling in Washington. When it comes to the distribution of cars in the various states, I don't think the Interstate Commerce Commission can do it. I think they have utterly failed in the distribution of cars. I fail to find any rule in Illinois for the distribution of grain cars—if the Interstate Commerce Commission is assuming that function. I think the Interstate Commerce Commission should establish a rule for the distribution of grain cars. The conditions are chaotic in our state. I would like somebody to tell me when the state commissions start and the Interstate Commerce Commission ceases."

Commissioner Aitchison replied that as to the distribution of cars between shippers he believed that local officials could handle that question better than it could be handled from Washington.

Clyde M. Reed, member of the Kansas Court of Industrial Relations, referred to Car Service Order No. 10, relating to distribution of grain cars. He said the Kansas court had modified that rule so as to protect the movement of grain through elevators. He said he believed in the pooling of equipment so that the various sections of the west could have a supply of cars above normal when the grain crop began to move. He said at the beginning of the movement of the grain crop the supply of cars should be above normal and that to obtain that he believed that pooling of equipment was a desirable policy. He said the grain growers of Kansas had lost $5,000,000 on their wheat crop because a sufficient supply of cars was not available when the price was approximately 60 cents a bushel higher than now. He said none of the carriers in the northwest, middle west or southwest had had 100 per cent of their grain cars at any time during this season. He declared that the purpose of the transportation act failed unless a pooling arrangement whereby a sufficient supply of cars above normal could be supplied to move the grain after harvest could be worked out.

Charles Webster, of the Iowa Commission, referred to the fact that Commissioner Funk of Illinois had been elected to the new Congress and that he hoped the transportation act would be amended so that the state commissions would know definitely where they stand. He said The Traffic World had said that the state commissions were selfish and a nuisance and that they ought to be eradicated.*

"If that is the case, there is no need for further discussion," he said.

Commissioner Aitchison, referring again to the remarks made by Mr. Funk, said he was not aware of any action taken by the federal authorities which would prevent the Illinois commission or the Iowa commission from providing for distribution of equipment within the states.

Mr. Funk said in reply to a statement by Commissioner Aitchison that the federal Commission had laid down a rule in the Nebraska case as to the distribution of grain cars between shippers in interstate commerce that it was a physical impossibility to determine whether a car entered an interstate or intrastate movement.

"Does the Interstate Commerce Commission assume to provide the rule for distribution at stations as between shippers?" asked Mr. Funk.

Commissioner Aitchison replied that what the Commission had done was a matter of record. Referring to the Nebraska case, he said the federal Commission "would have been very much benefited by the united judgment of the state commissions" on the questions in that case, but apparently there was a difference of opinion among the state commissions.

Commissioner McChord, chairman of the committee on safety of railroad operation, submitted that committee's report which was received for printing. There was no discussion. The report related to a technical discussion of rails with their relation to safety.

T. D. D. Worthen, chairman of the committee on safety on operation of public utility companies, submitted a report which was accepted for printing. There was no discussion. The report related to activities looking toward the prevention of accidents.

### Officers Elected

At the close of the morning session November 10 officers were elected for the ensuing year, there being only one nomination in each instance and the secretary being instructed to cast a unanimous ballot for each of the new officers.

James A. Perry, member of the Georgia commission, who was first vice-president of the association, was elected president; Carl D. Jackson, chairman of the Wisconsin commission, who was second vice-president, was elected first vice-president;

*Note—Of course The Traffic World never said any such thing.—Editor The Traffic World.

Dwight N. Lewis, chairman of the Iowa Commission, was elected second vice-president; James B. Walker, secretary of the New York commission, First district, and L. S. Boyd, librarian of the Interstate Commerce Commission, secretary and assistant secretary, respectively, of the association, were elected by unanimous vote.

In his speech of "acceptance," Mr. Perry discussed the efforts being made by the railroads to curtail the power of the state commissions over intrastate rates.

"Many believe the very existence of the state commissions is on trial," said Mr. Perry.

He declared that in his opinion it was not best for the railroads to hold the views they do with respect to state control over rates and predicted that if the carriers were successful in their present efforts, the people eventually would re-establish full state regulation of the railroads. Te expressed the belief that the railroads would prosper more with state regulation than without it, particularly with respect to state regulation of rates.

"The people are willing, if they know the facts, to do the right thing," he said. "If I owned a railroad today I would be on exactly the opposite side of the railroads in their efforts to have a construction placed on the transportation act that will eliminate state control of rates. If rate-making as enjoyed heretofore by the state commissions is going to be abrogated, in the end the people, through Congress, will restore whatever rights may be taken from the states at this time."

Referring to the rate situation in Georgia as a "muddle," Mr. Perry declared there were rate conditions there that no federal agency could correct.

"The railroads will not stop at elimination of state rate control," he continued, adding that if successful now they would extend their efforts to practically all phases of state regulation.

"This association has a work to do greater than ever before. Do we propose to sit indifferently not only as to rates but as to all other regulation?"

The new president pledged his efforts toward the preservation of the rights of the states and appealed for co-operation during his administration.

John A. Guiher, of the Iowa commission, one of the three state commissioners who sat with the Interstate Commerce Commission in the advanced rate case, spoke briefly with respect to the experience of the state commissioners in that case. He said they were treated with the kindest consideration and respect by the interstate commissioners and had every opportunity to discuss questions that arose in the conferences. He said he believed that the fact that the state commissions were represented in the hearings and conferences would be productive of much good. He said he could not refrain from telling under what pressure the interstate commissioners worked throughout the advanced rate proceedings—that they were on the job early in the morning and late at night.

### Street Railway Problems

At the Wednesday afternoon session, round table conferences were held on the subjects of street railway transportation and the problem of maintaining standards of service by utility companies. E. I. Lewis, chairman of the Indiana commission, presided at the street railway conference, and Henry R. Trumbower of the Wisconsin commission, at the service conference.

The rate of fare on street railway lines was the principal subject discussed at the street railway conference. Mr. Lewis told of the rejection in Indianapolis of the service-at-cost plan, expressing the belief that it would be found that this plan was not desirable. Commissioner Flad of Missouri said he believed the zone system of rates furnished the only rational solution of the problem confronting the street railways.

Mr. Trumbower, of the Wisconsin commission, advanced the thought that owners of automobiles who used their cars in fair weather and depended on the street cars for transportation in bad weather should in some way be made to pay part of the cost of maintaining street car service.

"There ought to be some way of imposing a service charge on automobile owners," said Mr. Trumbower.

Mr. Lewis said the suggestion of Mr. Trumbower appealed to him.

Commissioner Jackson of Wisconsin said traffic had not been reduced on street car lines in Wisconsin cities because of increased fares. Commissioner Shaw of Illinois reported similarly for Illinois cities. Commissioner Ainey of Pennsylvania did not believe that any analysis of the street railway problem could be made that would be applicable generally. He also expressed the idea that regulatory bodies should not permit themselves to be blamed by public service corporations for the condition in which they find themselves at present. He said there had been efforts of corporations to throw such responsibility on the regulatory bodies when it did not belong there.

Commissioner Clen Dening of Ohio said that body had no jurisdiction over street railways under the state law and that it did not wish to have anything to do with street car troubles. He said the street car companies had had the law made so that the state commission would not have jurisdiction.

The various methods of getting public utilities to keep their service up to standard were discussed at the conference on that subject. Commissioner Shaw of Illinois suggested that the law of Illinois might be amended so that municipalities could bring court action to obtain performance of service to a required standard. He thought that might satisfy to a certain extent the demand for "home rule."

### Contract Carriers by Rail

George P. Pell, chairman of the committee on express and other contract carriers by rail, submitted the report for that committee. It reviewed the status of the express business before the war and the consolidation of the four leading express companies into the American Railway Express Company during federal control. The report contained a history of the express rate situation brought down to the recent advances.

As to consolidation of the companies, that question now being before the Commission, the report said that while the state commissions generally opposed the consolidation, chief concern was to protect the shippers of the country from being defrauded by the old express companies out of just claims which accrued before the consolidation. The committee declared that it would be an outrage if the consolidation should be approved before such arrangements have been made that will insure that the holders of just claims will be protected.

In case of consolidation, the committee said, it would be necessary for the public to invent means by which some competition with express service can be had. The committee said on this subject:

"It is suggested that the package car service of the railroads might be brought to such state of perfection as to offer some relief; also that the parcel post could be developed into a real live competitor by increasing the weight and size of packages transported. It is possible, in the transportation of carload express, for railroads to be made competitors in such manner as to improve the service.

"One of the general managers of one of the great railroads of the country recently said that if the express companies were held in their legitimate sphere of transporting only reasonably sized packages of reasonable weight it would give the railroads an opportunity to develop a fast freight service for larger parcels of considerable weight, but that if express companies are allowed to transport all parcels from a box of toothpicks to a steam engine and boiler there would be little encouragement for the rail carriers to seek the development of a fast freight service on less than carload shipments. There is little doubt that it is within the power of the railroads to transport less-carload shipments in a way to give service very nearly as satisfactory in point of time of transportation as express service, especially in densely populated territory. During the hearing before the Interstate Commerce Commission of the Packer cases several pages of testimony were entered in the record to the effect that the railways, in handling the Packers Peddler cars, were maintaining fairly dependable schedules on this traffic and were transporting these peddler cars with dispatch approaching express service. Instances were cited where the railroads were hauling peddler cars from five to seven hundred miles and accomplishing deliveries of contents at destinations quicker than on less-carload traffic passing through the freight stations for the same destination when originating at cities less than one hundred miles away. It was evident that on peddler car routes schedules for these cars were being maintained exceedingly well and, in comparison with other merchandise package freight, peddler car shipments were being delivered with extraordinary dispatch. It is therefore evident that such a thing as dispatch and reliable schedules on less-carlot freight is by no means impracticable of accomplishment. It is well known that much of the delay occasioned in the handling and movement of less-carload freight occurs at the terminals, break-bulk and interchange points. It is the removal of the causes of delay at these particular points that will enable the railroad managements to take a long step towards developing a quick service that will greatly aid the less-carlot shippers.

"The development of the motor truck service holds out to shippers much encouragement. Two important things connected with motor truck transportation, however, must be realized before this service can be fully developed. The foremost is the improvement of highways. There must be better roads for these vehicles. Then there must be proper protection to the shipper against the possibility of loss and damage to goods in transit. The Southern Wholesale Grocers' Association at their last annual meeting approved of the motor truck as a means of transportation for less car-load merchandise package freight and there is a great movement on foot in all parts of the country to bring to the relief of the shipper in competition with express service this useful method of transportation. This is an idea worthy of the attention of shippers. At present motor truck transportation is not always dependable or reliable."

Glenn E. Plumb, author of the Plumb plan for government ownership and employe-operation of the railroads, attended the session of November 9, when the report on public ownership of utilities was being discussed.

The next annual meeting of the National Association of Railway and Utilities Commissioners will be held at Atlanta, Ga., beginning October 11, 1921.

"It is urged with force that a meeting at some point in the South is desirable to extend the interest in and knowledge of the association to that section of the country," the committee report on time and place, submitted by Commissioner A. R. Weed of Massachusetts, sets forth. "The election of a southern member as president makes such a course especially appropriate for this next annual meeting. Your committee therefore recommends that the next annual meeting of the association he held at Atlanta, Ga., beginning on the second Tuesday in October, 1921."

The report was unanimously adopted. Commissioner Perry of the Georgia commission, the new president of the association, said he believed the holding of the next meeting at Atlanta would quicken the interest of the southern commissions in the work of the association. He said he attributed the lack of interest heretofore to the fact that the southern commissions were not fully conversant with the association's activities.

### Rights of State Commissions

Commissioner Putnam of Minnesota, chairman of the special committee which was appointed in Chicago, September 11, to defend the rights of the state commissions in the intrastate rate cases, submitted a brief report, reviewing what the committee had done in the New York and Illinois passenger fare cases. The report in part was as follows:

"If the position of the carriers is supported by the Interstate Commerce Commission and the courts the state commissions will have very little usefulness in the field of rate regulation.

"There are now pending twenty cases involving the same question as that presented in the New York and Illinois cases, most of which have been heard and testimony completed. The Wisconsin case is set down for argument on November 12.

"Your committee believes that this association should take vigorous action to see that the public side of such cases as may arise before the Interstate Commerce Commission and in the courts, involving the powers and rights of the several states to control the rates and regulations applicable to intrastate commerce, may be fully presented. To that end your committee recommends that the President be authorized to appoint a committee for the ensuing year to represent the association with the same powers that were granted to this committee in the resolution heretofore set forth."

The report was adopted and referred to the executive committee, which submitted a resolution providing that the President should appoint a committee of seven to act in all matters for the association wherein the rights and powers of the states over rates and regulation may be involved. This committee will work with the solicitor general. The resolution was adopted.

### Co-operation with I. C. C.

A resolution was adopted with respect to co-operation between the state commissions and the Interstate Commerce Commission. After setting forth paragraph 3 of Section 13 of the interstate commerce act, which provides for joint hearings by state commissions and the Commission, the resolution was as follows:

"Whereas, Said provisions authorizing co-operation were enacted in conformity with recommendations made to the Congress by this association, which recommendations were also in harmony with the recommendations made by the Interstate Commerce Commission; and

"Whereas, This association is desirous of doing all that can be done by it to promote genuine co-operation between the state and federal authorities exercising regulatory jurisdiction over common carriers; and

"Whereas, It is the judgment of this association that in order that the maximum benefit may be derived from said co-operative provisions, it is desirable that it should be understood in what classes of cases co-operation between state and federal authorities is deemed feasible by the Interstate Commerce Commission, and, with respct to each class of cases, whether by joint conference or joint hearing, and under what rules of procedure such joint conferences or hearings may be initiated and carried forward; therefore, be it

"Resolved, That the president of this association be authorized to transmit to the chairman of the Interstate Commerce Commission a copy of this resolution, and to advise him that this association would welcome a conference upon the subject matter of the resolution as early as the same may be desired by said Interstate Commerce Commission.

"Be it further resolved, That the president and vice-presidents of this association, together with the executive committee and the general solicitor, be authorized to represent this association at any such conference as may be arranged by the president with the Interstate Commerce Commission, and that they be directed to report the results, together with their recommendations, if any, to the several commissions, and to the next convention of this association, it being, however, understood that any conclusion arrived at in said conference, or any recommendation made by said representatives of this association, shall be in no way binding upon any state commission except as the same shall be adopted by it."

### Resolution on Valuation

Passage of the bills submitted in the Senate and House by Senator Cummins and Representative Esch, respectively, designed to relieve the Interstate Commerce Commission from reporting in its valuation work "the original and present cost of condemnation and damages or of purchase in excess of such original cost or present value" of carriers' lands was urged in a resolution on the valuation question. The resolution was adopted. The resolution refers to the situation growing out of the decision of the United States Supreme Court in the Kansas City Southern and in which the court held the Commission had to obey the valuation statute and make the report required. The resolution follows:

"Whereas, paragraph entitled Second of Section 19-a of the Interstate Commerce Act as amended, commonly called the Valuation Act, provides that as to each railroad property valued by the Commission its report 'shall state in detail and separately from improvements the original cost of all lands, rights-of-way, and terminals owned or used for the purposes of a common carrier, and ascertained as of the time of dedication to public use, and the present value of the same, and separately the original and present cost of condemnation and damages or of purchase in excess of such original cost or present value;' and

"Whereas, The Supreme Court of the United States in its opinion in the Minnesota rate cases used language as follows:

> It is manifest that an attempt to estimate what would be the actual cost of acquiring the right-of-way, if the railroad were not there, is to indulge in more speculation. The railroad has long been established; to it have been linked the activities of agriculture, industry and trade. Communities have long been dependent upon its service, and their growth and development have been conditioned upon the facilities it has provided. The uses of property in the communities which it serves are to a very large degree determined by it. The values of property along its line largely depend upon its existence. It is an integral part of the communal life. The assumption of its non-existence, and at the same time that the values that rest upon it remained unchanged, is impossible and cannot be entertained. The conditions of ownership of the property and the amounts which would have to be paid in acquiring the right-of-way, supposing the railroad to be removed, are wholly beyond reach of any process of rational determination. * * The conpany would certainly have no ground of complaint if it were allowed a value for those lands equal to the fair average market value of similar land in the vicinity, without additions by the use of multipliers, or otherwise, to cover hypothetical outlays;

"Whereas, The Interstate Commerce Commission has in principal part completed its field appraisal work covering lands upon all lines of railroad in the United States, and has prepared itself to report, both as to the original cost of such lands and as to their present value based on the value of similar adjoining lands, but, holding any estimate which it might make as to the cost of condemnation and damages in excess of original cost or present value to be of no worth as an aid to the determination of the ultimate value of railroad properties, under the rule as laid down in said Minnesota rate cases opinion, has refrained from making any investigation, or accumulation of data necessary to enable it to make such an estimate as to said lands; and

"Whereas, In the case of the Kansas City Southern Railroad vs. Interstate Commerce Commission, decided by the United States Supreme Court on March 8, 1920, it was held that the making of said estimate of the 'present cost of condemnation and damages or of purchase in excess of original cost or present value' is one of the 'essential conditions imposed by Congress upon its (the Commission's) exercise' of the general power granted to it under the Valuation Act; and

"Whereas, A writ of mandamus was ordered to be issued requiring the Interstate Commerce Commission to make said estimates; and

"Whereas, The effect of said 'condition imposed by Congress,' as the Supreme Court construes the Valuation Act, will be to require the Commission to retrace its steps, and to make investigations and gather data to enable it to make the required estimate as to the lands of carriers upon all lines of railroad in the United States, at the cost of much money and long delay in the completion of its valuation work under said act; and

"Whereas, Said estimate when made will still be subject to the condemnation expressed by the Supreme Court in its opinion in the Minnesota Rate Cases; and

"Whereas, Full justice may be done to the carriers, so far as lands are concerned, by taking into consideration the original cost of the same, and of their present value based upon the value of similar adjacent lands; and

"Whereas, Additional allowance based upon purely hypothetical estimates in excess of original cost or present value would be grossly unjust to the public, and would compel further burdensome increases in rates to pay returns upon such fictitious estimates of value; and

"Whereas, Bills have been introduced by Senator Cummins and Congressman Esch, and are now pending in Congress, to amend the Valuation Act by striking out the words which require such estimate to be made, leaving the Interstate Commerce

Commission free to fix the fair value of each railroad property upon a consideration, as to lands, of the original cost of the same and the present value based upon the value of other similar adjacent lands; therefore, be it

"Resolved, That the National Association of Railway and Utilities Commissioners endorses the amendment proposed in said bills, and respectfully urges upon Congress the prompt passage of the same."

The resolution regarding valuation bases, which was submitted by Paul P. Haynes of Indiana at Indianapolis last year with a report as to how the resolution had been received by the various commissions, was submitted by Commissioner Taylor of Nebraska of the valuation committee. The resolution was as follows:

Whereas, In recent years the cost-of-reproduction method of evaluation has in many instances become the controlling factor in determining the fair value of the property of public utilities, and

Whereas, During the past few years, there has been an unprecedented increase in the cost of materials and supplies entering into the construction of utility properties, and

Whereas, The cost-of-reproduction method of evaluation, although applied with moderating averages, arbitrarily attaches to properties constructed before the high price period, values greatly in excess of the actual prudent investment therein, in many instances from 25 to 100 per cent greater than such investment, and

Whereas, Under present abnormal conditions, the cost-of-reproduction theory has ceased to perform the service which it was designed to perform, and now leads to unwarranted and unreasonable values which offer little guidance in determining the fair value of the property of public utilities, and

Whereas, The continuance of the cost-of-reproduction theory as the controlling factor in public utility valuations will in the future undoubtedly cast a burden upon those utilities which were required by public necessity to make substantial plant investments during the high price period.

Therefore Be It Resolved, By the National Association of Railway and Utility Commissioners, that a continued disposition on the part of commissions and courts to consider cost-of-reproduction or cost-of-reproduction-less depreciation as the controlling factor in determining the value of the property of utilities will tend to impair scientific and equitable regulation, to permit the establishment of unwarranted and unreasonable values, and ultimately to diminish public confidence in commissions and courts, and thereby impair their usefulness.

Be It Further Resolved, That one of the obligations of commissions and regulatory bodies is to protect and preserve, in so far as it lies within their power, honest and prudent investment in utility properties, and that in view of abnormal price conditions now prevailing, equity, justice and a proper regard for the interests of utilities as well as the public seem to demand that in the valuation of public utility property greater weight should be given to the honest and prudent investment therein.

Be It Further Resolved, That it is not intended by this resolution to hold that the fair value rule should be abandoned or impaired, but rather that under the fair value rule and in view of abnormal conditions prevailing, a greater measure of justice and equity will be secured by giving greater weight to the honest and prudent investment, and less weight to the cost-of-reproduction or cost-of-reproduction-less depreciation.

Mr. Taylor said 21 commissions declared themselves in favor of the resolution; that two were unfavorable; four were noncommittal, and seven gave no expression of their attitude. Commissioner Burr of the Florida commission said that that commission, which was not included in Mr. Taylor's list, approved the resolution.

"After giving careful consideration to the matter," the valuation committee reported, "your committee is of the opinion that no formal action on this report is necessary or desirable. The investigation has served a useful purpose in that it has brought together the minds of practically all the commissions on this important subject."

The commissions favorable to the resolution in all or in principle were: Texas, New Jersey, Oregon, Oklahoma, Washington, Massachusetts, Kansas, Georgia, Wisconsin, New Hampshire, North Oakota, New York, first district; South Carolina, Michigan, Virginia, Wyoming, Montana, Connecticut, Louisiana, West Virginia and Ohio. Those unfavorable were: New York, second district; Nevada; those non-committal, Maine, Utah, Illinois and Minnesota; those which acknowledged receipt but took no action were: California, Porto Rico, New Mexico, Florida, Maryland, District of Columbia and Vermont.

Commissioner Maxwell of the North Carolina commission offered a motion that the valuation committee be required to make a digest of court decisions and the statues on the valuation subject. The motion was adopted.

A resolution submitted by the executive committee directing the President to appoint a committee of three to make a general survey of public utility laws with recommendations as to changes therein that would be of benefit to the public was adopted.

The resolutions of the executive committee were submitted by Dwight N. Lewis, chairman of the committee, and member of the Iowa commission.

### Car Distribution

Further discussion of the question of distribution of cars was taken up at the morning session of November 11, Mr. Reed of the Kansas Court of Industrial Relations calling attention again to CCS No. 10 issued by the car service division of the American Railway Association and providing rules for the distribution of cars.

Mr. Reed made the statement that CCS No. 10 had the approval of the Interstate Commerce Commission. Commissioner Aitchison of the Interstate Commerce Commission asked where that information was obtained. Mr. Reed said the railroads had informed the shippers in Kansas that the Commission had approved the rule and that therefore it would be enforced. Mr. Aitchison said the Commission had not formally adopted or approved the rule in question and that it was put into effect by the carriers subject to attack before the federal or the state commissions. Mr. Reed declared that nothing had caused so much confusion in the distribution of grain cars as the manner in which the carriers applied the rule under discussion.

"If you can get together and reach an agreement, there will be no trouble about securing uniformity," said Commissioner Aitchison, referring to statements to the effect that one rule was applied to interstate and another to intrastate distribution of cars.

"The carriers should stop telling shippers that Rule 10 will be enforced because the Commission has approved it," Mr. Reed said.

E. I. Lewis, chairman of the Indiana commission, said he believed it would clarify matters "if the Interstate Commerce Commission would give us a clear cut statement as to what we are supposed to do and not come in conflict with the Interstate Commerce Commission." He referred to local distribution of cars.

This brought a reply from Chairman Clark of the Interstate Commerce Commission to the effect that it did not seem reasonable to require the Commission to attempt to outline what it would do in the future under circumstances with which it was not yet acquainted, especially in view of the sharp difference of views that no doubt would develop among the state commissions. He said he did not know what the Commission would do or what it might have to do, but that the Commission should be judged by what it had done in the past and not by what it might do in the future under new circumstances. He said in the past the efforts of the Commission had been directed to a localization of the car distribution question.

## INTRASTATE RATE ADVANCES

*The Traffic World Washington Bureau*

By an order in No. 11915, "Georgia Rates, Fares and Charges," the Commission has fixed for hearing December 6 at Atlanta, Ga., before Examiner Gerry, the application of the carriers asking for removal of alleged discrimination against interstate commerce caused by the fact that the Georgia state commission made exceptions to the percentage increases authorized on intrastate traffic in that state. The Georgia commission authorized the same percentage increases as granted by the Interstate Commerce Commission but stipulated that there should be no increase on brick, cotton and cotton linters. As to passenger fares, it provided that no increase should be made above 5 cents per mile.

The Nevada intrastate rate situation will be the subject of investigation by the Commission under an order entered in No. 11914, "Nevada Rates, Fares and Charges." No date or place for the hearing on the petition of the carriers for removal of alleged discrimination against interstate commerce was fixed in the order. The Nevada commission declined to authorize any of the increases asked by the carriers.

## REPORT ON WASHINGTON WESTERN

(Continued from page 890)

the public for hire, and as such entitled to compensation, the Commission made a report holding the rates from points on the Washington Western to be unreasonable and unduly prejudicial but never made an order of reparation.

Adoption of the Brown report will cause an elimination of the holding of unreasonableness. If allowed to stand, that finding would force the Commission, under the principle laid down in the Darnell-Taenzer case, to award reparation. In the absence of proof of damage a holding of undue prejudice will not carry with it an award of reparation on account of the higher rates paid by the shippers from points on the Washington Western.

In response to the order of the Commission, based on the earlier hearings, the Great Northern and Northern Pacific filed rates in compliance with the letter of the order but the complainants contended that that was not enough, and Brown's recommendation amounts to a proposal to the Commission that it agree with them to that extent.

Under the form of order proposed by Brown, the trunk lines will have the theoretical option of raising the level of the coast-group rates or of establishing rates from Washington Western points no higher than the existing rates. The option, is is believed, will be more theoretical than real, for the reason that the rates now in effect are supposed to be reasonable as maxima, because permitted by the Commission in its 1920 Advanced Rate case decision on the theory that they will bring the railroads enough money to enable them to earn a 6 per cent return on the value of the property devoted to transportation.

## SHIPPERS PROTEST ACTS OF CARRIERS

As the result of an informal correspondence between a large number of traffic representatives of western commercial organizations and shippers and receivers of freight, discussing the changes in rates and classifications recently made and proposed, a meeting was held in Chicago, October 22, at which meeting there were present in person the following: H. C. Barlow, T. D., Chicago Association of Commerce, Chicago, Ill.; G. M. Cummins, T. C., Commercial Club, Davenport, Ia.; F. S. Keiser, T. C., Commercial Club, Duluth, Minn.; F. M. Medbury, Green Bay Association of Commerce, Green Bay, Wis., and T. M., Indian Packing Company, Chicago, Ill.; C. M. Starks, T. M., Association of Commerce, Oshkosh, Wis.; C. S. Bather, C. C., Manufacturers' and Shippers' Association, Rockford, Ill.; H. Mueller, T. D., St. Paul Association, St. Paul, Minn.; R. L. Brix, A. T. M., American Fruit and Vegetable Shippers' Association, Chicago; W. W. Manker, A. T. M., Armour & Co., Chicago, Ill.; J. W. Bingham, T. M., Corn Products Refining Company, Chicago, Ill.; C. F. Miller, secretary, Griggs, Cooper & Co. and Sanitary Food Mfg. Company, St. Paul; H. A. Laing, T. M., Libby, McNeill & Libby, Chicago, Ill.; C. A. Brantley, A. T. M., Libby, McNeill & Libby, Chicago, Ill.; L. E. Muntwyler, A. T. M., Montgomery Ward & Co., Chicago, Ill.; H. W. Thorn, A. T. M., Montgomery Ward & Co., Chicago, Ill.; E. J. Bachman, A. T. M., Morris & Co., Chicago, Ill.; L. F. Berry, T. M., Reid, Murdock & Co., Chicago, Ill.; W. T. Hayes, A. T. M., Sears, Roebuck & Co., Chicago, Ill.; C. O. Dawson, T. M., Sprague, Warner & Co., Chicago, Ill.; H. B. Hunter, T. M., Stone, Ordean Wells Company, Duluth, Minn.; G. F. Ford, A. T. M., Swift & Co., Chicago, Ill.; R. R. Hargis, A. T. M., Wilson & Co., Chicago, Ill.; and, by proxy, the following: L. B. Golden, T. M., Shippers' Association, Burlington, Ia.; L. M. O'Leary, T. M., Commercial Club, Fort Dodge, Ia.; J. H. Tedrow, T. M., Chamber of Commerce, Kansas City, Mo.; J. J. Blommer, T. S., Association of Commerce, Milwaukee, Wis.; W. P. Trickett, M. D., Minneapolis Traffic Association, Minneapolis, Minn.; C. E. Childe, manager, Chamber of Commerce, Omaha, Neb.; R. M. Field, T. M., Association of Commerce, Peoria, Ill.; L. B. Boswell, commissioner, Quincy Freight Bureau, Quincy, Ill.; W. J. C. Kenyon, T. M., Commerce Club, St. Joseph, Mo.; P. W. Coyle, T. C., Chamber of Commerce, St. Louis, Mo.; J. P. Haynes, commissioner, Traffic Bureau, Sioux City, Ia.; R. D. Springer, commissioner, Traffic Bureau, Sioux Falls, Ia.; F. H. Draper, T. M., Western Grocer Company, Marshalltown, Ia.

After a discussion of the entire subject a motion was unanimously adopted directing the chairman and secretary of the meeting to confer with J. H. Beek, executive secretary of the National Industrial Traffic League, and request that the following resolutions be placed on the docket of the League for consideration and adoption at its annual meeting in New York, and further directing that a copy of the resolutions be sent to Daniel Willard, president of the B. & O. Railroad and chairman of the Railroad Executives' Advisory Committee, and to C. W. Markham, president of the Illinois Central Railroad, as representative of the western and southern railroads, with an appropriate letter of transmittal:

"Whereas, The National Industrial Traffic League took a prominent part in formulating and advocating some of the most important and essential provisions that were embodied in the Transportation Act of 1920, the controlling motive for which was to secure for the carriers whatever revenue was necessary to insure their speedy rehabilitation and more efficient operation; and

"Whereas, As a natural and logical sequence to this activity a special committee representing the National Industrial Traffic League appeared before the Interstate Commerce Commission during the hearings in Ex Parte 74 and urged the Commission to grant whatever increases were found justifiable and necessary to carry out the provisions of the Transportation Act; and

"Whereas, This action was taken by the League, with a full realization by its representatives of the fact that a further material percentage increase in rates would greatly magnify and aggravate the already serious and glaring discrepancies and inequalities in the rate structure growing out of the successive general increases; and

"Whereas, This assistance was given to the carriers by the shipping public generally and more particularly by that substantial portion thereof represented in the National Industrial Traffic League upon the assumption that when the carriers should be restored to private control and operation and the necessary increases in transportation charges had been granted they would give prompt and serious attention to the removal of these injurious inequalities by making proper and necessary readjustments; and

"Whereas, Instead of proceeding with this work, which was admitted by the carriers would be necessary and which the shippers had every right to expect, it has become more and more apparent each day since the increases in Ex Parte 74 were granted that there is no real inclination or desire on the part of the carriers to iron out these discrepancies, but, on the contrary, there appears to be a well-defined plan to secure further and unauthorized increases in revenue, thereby placing additional burdens upon the shippers and the commerce of the country. In this connection we invite attention to the following language used by the Interstate Commerce Commission at page 256, volume 58, of the Commission's report in Ex Parte 74, which is clear and requires no comment:

> The rates to be established on the basis hereinbefore approved must necessarily be subject to such readjustments as the facts may warrant. It is conceded by the carriers that readjustments will be necessary. It is expected that shippers will take these matters up in the first instance with the carriers and the latter will be expected to deal promptly and effectively herewith, to the end that necessary readjustments may be made in as many instances as practicable without appeal to us.

"Whereas, This attitude on the part of the carriers seems to originate with those high in authority (as many of the traffic officials are clearly not in sympathy with some of the changes in rates, classifications, rules and regulations that have already occurred and that are proposed) who, in their desire for more revenue, are alienating, to a large degree, the friendly attitude of the shipping public and creating in its place a feeling akin to hostility towards and distrust of the motives of the carriers which is already manifesting itself among even the most conservative shippers; and

"Whereas, This situation is a most serious one at a time when it is so vitally necessary to have real co-operation between the public and the carriers in an effort to solve the many problems which affect their respective interests; and

"Whereas, It will be conceded that business and economic conditions are badly disturbed and that there is in consequence a real emergency confronting the nation, which makes co-operation between all interests, and especially between shippers and carriers, imperative if normal conditions and stability in business are to be restored so that the country may again enjoy its deserved prosperity; and

"Whereas, A return to normal business conditions is utterly impossible unless there is reliable assurance that there will be reasonable stability in transportation charges and prompt restoration of the rate relationships between markets under which the business of this country was built up over a long period of years; and

"Whereas, The shippers, almost without exception, have uncomplainingly subjected themselves to great expense and inconvenience, and are continuously doing so, in their efforts to co-operate with the carriers to the end that the inadequate transportation facilities may function more effectively; and

"Whereas, In return the shippers have a right to expect considerate treatment by the carriers in the matter of service and the charges for that service. In this connection attention is called to the following commendable expression of views embodied in a recent statement by Fairfax Harrison, president of the Southern Railway:

> The tremendous increase of railroad rates authorized by the Interstate Commerce Commission seems to complete the cycle of government management of the railroad industry. It was necessary to carry the scale of expenses set up by the Railroad Administration but it must cause grave concern as to its economic consequences. It now remains for private management to resume the practice of competitive efficiency and self-reliant initiative which distinguished the American railroads during so many years and to justify the preference of the American people for that form of administration by making possible not only the success of individual companies and the prosperity of their loyal employes, but a constant and progressive reduction of rates accompanied by an enlargement of service to the public such as may be traced through the old-fashioned railroad stations. No one can expect this to be accomplished over night, considering the practical conditions, but a start can be made at once. Relying on the co-operation and support of the employes, the management of the Southern Ry. System will make the effort.

which views should now be given practical application by all carriers; and

"Whereas, The various traffic committees and other rate-making agencies have recently been exceedingly active in an apparent systematic effort to bring about further increases by the cancellation of or revision of commodity rates, both carload and less than carload; the proposed so-called car spotting charges; also by proposed general revisions of entire class rate scales and structures, which activities the shippers view with apprehension and alarm because of the manifestly inopportune time for further increases and changes; and

"Whereas, When the shippers find that they cannot acquiesce in all manner of unjustifiable and inconsistent changes and upward revisions that are being put before them for approval, they are frequently accused by the carriers of lacking in the spirit of co-operation; and

"Whereas, The docket notices that are promulgated by the various freight traffic committees are for the most part very brief, incomplete and unsatisfactory because they seldom contain any reason for the proposed changes, making it exceedingly difficult and, in many cases, absolutely impossible, for the shippers to determine what effect the proposal will have on their business, thereby effectively defeating the real purposes of the present procedure in making rates; and

"Whereas, The Consolidated Classification Committee is ad-

mittedly engaged in a general revision, the object of which is to bring about uniformity of ratings in the three classification territories, and for which uniformity there is no necessity nor demand on the part of the shipping public; and

"Whereas, This unification scheme is generally being brought about by the adoption of the highest existing rating, which method has no justification, except as a measure to secure further increases in rates for the carriers, and which method has in the past been condemned by the Interstate Commerce Commission and the results of which are illustrated in the exhibits appended and made a part thereof; and

"Whereas, Serious and irreparable injury has already been done through the medium of unification in classification ratings, as illustrated by the increases made effective in Supplement No. 7 to Consolidated Classification No. 1 as a result of Docket No. 3; and

"Whereas, Similar injury, but in much greater measure, will result from the changes proposed in Docket No. 4, on which hearings were held during the month of August, 1920, and those proposed in Docket No. 5, which is now in course of preparation; and

"Whereas, Docket No. 4 was promulgated at a time when everyone who had any connection therewith knew that the Interstate Commerce Commission would very shortly grant to the carriers a large increase, which increase would of necessity be predicated upon the rates and classifications then in effect, and be adequate to comply with the mandate of the Transportation Act; and

"Whereas, The shippers feel that the carriers are making a serious mistake in pursuing a policy that persistently irritates the shippers who are already so hard pressed in their efforts to meet the changed conditions resulting from the enormous increases in transportation charges; now, therefore, be it

"Resolved, by the National Industrial Traffic League, in annual meeting assembled, That it protests against any further increases in rates, either through classification changes, cancellation of commodity rates or exceptions to the classifications, or otherwise; and be it further

"Resolved, That a copy of this preamble and resolution be forthwith transmitted to each member of the American Railway Executives' Association."

Following is the letter sent to Daniel Willard and C. H. Markham, signed by H. Mueller, chairman, and George M. Cummins, secretary of the meeting:

"Pursuant to the instructions of a conference of shippers' and commercial traffic representatives, held in Chicago on October 22, 1920, there is transmitted herewith for your information and also for the information of your associates, a copy of the resolutions that were unanimously adopted at that meeting.

"You will note that there was vigorous and unanimous disapproval of all actions by the carriers to secure further increases in rates until time has made possible a fair test of the increases granted in Ex Parte 74 and that this disapproval found expression in the adoption of resolutions that will be submitted to the National Industrial Traffic League with a request for adoption at the annual meeting to be held in New York on the 18th and 19th instants.

"In the meantime, we trust that the transmission of this information to you as the representatives of the Railroad Executives in the Eastern, Southern and Western territories will result in immediate instructions being given to the various rate and classification committees to at least suspend the activities which are condemned in these resolutions.

"In this connection we desire to call your particular attention to the proposed unification of classification ratings. Some of these changes have already become effective as a result of Docket No. 3 of the Consolidated Classification Committee. A large number of very important food and other items are embodied in Docket No. 4, and we understand the unification scheme is also the dominant factor in Docket No. 5, now being prepared.

"The policy clearly seems to be to adopt the highest rating in effect in any classification territory, and the result is most extraordinary and alarming. Many staples that move in immense volume have been and will be increased from one to three classes, and the only justification for such radical and destructive increases is unification.

"Some of those present at the meeting had received unofficial assurance that the increases proposed in Docket No. 4 had been withdrawn or would be held in abeyance until after the first of the year, so that they could be made effective contemporaneously with a large number of other similar changes that it is understood are embodied in Docket No. 5.

"We feel that prompt and official assurance should be given by the carriers that these classification changes, proposed merely for unification, are dead and have been given decent burial, and also that steps should be taken to undo some of the damage that resulted from the adoption of increased ratings under Docket No. 3. As examples, we cite peanut butter, canned fruits, mince meat, macaroni and vinegar.

"Another large source of complaint is the cancellation of commodity rates and exceptions that is being pushed very vigorously. Some of the examples cited by those present at the meeting were the proposed cancellation of L. C. L. commodity rates on canned goods, sugar, syrup, etc., from the principal points of shipment in W. T. L. territory to Kansas and Nebraska; the substitution of the C. F. A. scale B fifth class rates for long-established commodity rates on sugar in W. T. L. territory; proposed increases ranging from 6 cents to 10 cents in carload rates on salt from Michigan and Ohio to the Twin Cities, because there is a fourth section violation via a circuitous route; changes in furniture rates to Pacific coast without hearing; cancellation of exceptions on bakery goods in W. T. L. territory, etc.

"The insufficiency of the docket notices being issued by the committees was also criticized. The shipper who receives these notices very frequently cannot ascertain what rates are proposed, and it is seldom indeed that any reason is given for a proposed change. He, therefore, does not know what issues he will be forced to meet at the hearing, if one is held, which, of course, seriously handicaps him in his preparation and deprives the carriers of information they should have for a correct determination of the question under consideration. In this connection we also call attention to the fact that the traffic and tariff officials of the various interested lines very often have no information regarding proposed changes beyond that contained in these insufficient docket notices and they, themselves, therefore cannot determine what their position should be.

"In the process of the several percentage rate increases and by arbitrary actions on the part of the Railroad Administration all semblance of relationship between many competing markets, as expressed in freight rates, has been destroyed and conditions are consequently badly disturbed. There are many changes that should be made as promptly as possible to iron out these discrepancies and the energies of the carriers should be devoted to this work. A more inopportune time for further general or material increases could not be chosen and, unless a halt is called, it will inevitably result in much unfortunate and, we believe, entirely unnecessary litigation.

"It is needless to remind you of the fact that the shippers represented in our conference have met the carriers more than half-way in response to appeals for co-operation toward making the transportation machine function more efficiently. The situation that confronts them as a result of the recent activities of rate committees, however, is one of grave concern and gives impetus to the rapidly growing opinion that the carriers are not appreciative of this fact, and the great services rendered to them by the shippers in securing legislation and an adequate rate increase and that real co-operation with the carriers is impossible.

"May we not have assurances that the action necessary to stem the tide of this unfortunate feeling will be taken?"

### PARTIAL LIST OF THE MORE IMPORTANT ITEMS IN DOCKET NO. 4 OF THE CONSOLIDATED CLASSIFICATION COMMITTEE IN WHICH MATERIAL INCREASES ARE PROPOSED IN WESTERN CLASSIFICATION TERRITORY.

| Subject No. | Commodity. |
|---|---|
| 61 | Coffee. |
| 62 | Coffee substitutes. |
| 66 | Disinfectants. |
| 83 | Feed, animal and poultry. |
| 125 | Molasses. |
| 152 | Spices. |
| 159 | Syrup. |
| 166 | Children's vehicles. |
| 198 | Fish. |
| 199 | Fruits, other than dried. |
| 200 | Jams, jellies and preserves. |
| 201 | Pickles. |
| 202 | Pimentos. |
| 204 | Table sauces. |
| 205 | Soups. |
| 206 | Canned vegetables. |
| 207 | Vinegar. |

### STATEMENT SHOWING INCREASES IN CENTS AND ALSO IN PERCENTAGE THAT WOULD RESULT FROM PROPOSED CHANGES IN WESTERN CLASSIFICATION RATINGS WHEN APPLIED IN CONNECTION WITH THE INCREASE IN RATES EFFECTIVE AUG. 26, 1920.

| | Increase in rating from— | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| Chicago | 2d to 1st. | | 3d to 2d. | | 4th to 3d. | | 3d to 1st. | | 4th to 2d. | |
| To— | Amt. | % | Amt. | % | Amt. | % | Amt. | % | Amt. | % |
| St. Louis | 34½ | 64½ | 33 | 80 | 27½ | 87 | 46 | 109½ | 43½ | 138½ |
| Des Moines | 41½ | 69 1-6 | 39½ | 88 | 33½ | 99 | 56½ | 125 | 50½ | 150 |
| Mo. River | 53½ | 65 | 53½ | 94 | 36½ | 91 | 78½ | 140 | 70 | 175 |
| St. Paul | 39 | 62⅓ | 34½ | 69 | 36 | 114 | 51½ | 103 | 53 | 168 |
| St. Paul To— | | | | | | | | | | |
| Eau Claire | 22 | 59 | 25½ | 102 | 15 | 80 | 34½ | 138 | 31½ | 146 |
| Duluth | 27 | 63 | 23½ | 65 | 20½ | 77 | 25½ | 101 | 32 | 123 |
| Mankato | 17 | 60 | 15½ | 69 | 14 | 85 | 22½ | 100 | 21½ | 130 |
| Aberdeen | 48½ | 60 | 45½ | 728 | 37 | 77 | 66 | 104 | 60½ | 127 |
| Fargo | 36½ | 60 | 33 | 68⅔ | 28 | 75 | 48½ | 101 | 44 | 119 |
| Billings | 111½ | 54 | 106 | 63 | 51 | 61 | 149 | 89 | 134½ | 96 |
| Omaha To— | | | | | | | | | | |
| Lincoln | 17 | 48½ | 15 | 51½ | 11½ | 46 | 23 | 80 | 19 | 76 |
| Topeka | 55 | 97 | 32½ | 74 | 25½ | 78 | 57½ | 130 | 42½ | 125 |

### STATEMENT SHOWING PERCENTAGE RELATIONSHIP OF THE FIRST FOUR CLASS RATES IN THE FOLLOWING SCALES.

| Chicago to— | 1 | 2 | 3 | 4 |
|---|---|---|---|---|
| St. Louis, Mo. | 100% | 85% | 67% | 50% |
| Madison, Wis. | 100 | 85 | 67 | 50 |

| | | | | |
|---|---|---|---|---|
| Missouri River | 100 | 81½ | 56½ | 40 |
| St. Paul, Minn. | 100 | 83 | 66⅓ | [illegible] |
| St. Paul, Minn., to— | | | | |
| Duluth, Minn. | 100 | 83 | 66⅓ | 50 |
| Eau Claire, Wis. | 100 | 85 | 57 | [illegible] |
| Fargo, N. D. | 100 | 84 | 67 | 52 |
| Montana common points | 100 | 86 2-7 | 71 3-7 | 60 |
| Spokane, Wash. | 100 | 87 | 73 | 53 |
| Pacific coast | 100 | 86.7 | 73.3 | 61 |
| New York, N. Y., to— | | | | |
| Chicago, Ill. | 100 | 88 | [illegible] | 46⅔ |
| Buffalo, N. Y. | 100 | 87 | 74 | 70 |
| Wisconsin mileage scale | 100 | 85 | 66⅔ | 50 |
| Minnesota mileage scale | 100 | 83⅓ | 66⅔ | 50 |
| Iowa mileage scale— 50 miles | 100 | 86 | 66 | 50 |
| Iowa mileage scale—100 miles | 100 | 85 | 66⅔ | 50 |
| Iowa mileage scale—150 miles | 100 | 78¾ | 61¼ | 47½ |
| Iowa mileage scale—200 miles | 100 | 77 3-5 | 58 | 47 |
| North Dakota scale— 50 miles | 100 | 83⅓ | 64 | 51 |
| North Dakota scale—100 miles | 100 | 86 | 65 | 51 |
| North Dakota scale—150 miles | 100 | 85 | 66 | 52⅔ |
| North Dakota scale—200 miles | 100 | 85 | 66 | 50 |
| South Dakota scale—East of Mo. River | 100 | 84 | 66 | 50 |
| Shreveport case | 100 | 85 | 70 | 60 |
| Southwestern class case | 100 | 85 | 70 | 60 |
| St. Louis-Texas case | 100 | 85 | 71 | 66 |
| Missouri River-Nebraska | 100 | 85 | 70 | 60 |
| Missouri River-Utah case | 100 | 85 | 75 | 55 |
| Iowa-Nebraska case | 100 | 84 | 67 | 50 |
| Missouri, intrastate (average) | 100 | 85 | 70 | 60 |
| Kansas, intrastate (average) | 100 | 88 | 78 | [illegible] |

## N. I. T. L. MEETING

Following is the docket for the annual meeting of the National Industrial Traffic League to be held in New York at the Waldorf-Astoria Hotel, November 18 and 19:

Proposed change in constitution (see Circular No. 279 of October 5).
Appointment of nominating committee.
Report of executive committee.
Plans for consolidation of railroads into a limited number of systems.
Terminal allowances and car spotting charges.
Report of committee on car demurrage and storage.
Report of classification committee.
Report of baggage committee.
Report of committee on coastwise shipping.
Report of committee on rate construction and tariffs.
Report of committee on inland waterways.
Senate Bill 4254 amending Panama Canal Act, permitting railroads to own and operate boats on the great lakes, etc.
Report of freight claims committee.
Supporting loss and damage claims with original or copy of invoice where shipments were sold through wholesalers or jobbers and shipped direct by the manufacturer to consignee who was his own customer.
Interest on loss and damage claims.
Allowance of trade and cash discount, to railroad companies in settlement of loss and damage claims.
McCaull-Dinsmore decision.
Supplying of newly approved forms for concealed loss and damage claims.
Filing of claims for loss and damage after expiration of the six months' period.
Examination of carriers' claim files on claims which had been declined.
Delayed payment of claims during the period of federal control.
Report of committee on diversion and reconsignment.
Report of express committee.
Combination express receipt and waybill form.
Embargo against express shipments weighing 200 lbs. or more.
Consolidation of express companies.
New classification.
Report of export and import traffic committee.
Report of legislative committee.
Interference with commerce—S. 4204.
Commercial bribery—S. 1024.
Liability of carriers by water.
Lake and rail service on the great lakes—S. 4254.
Withdrawal of water service transportation—H. R. 12953.
Liability of telegraph companies—S. 4336.
Amendment to the fifteenth section.
Report of committee on transportation instrumentalities.
Report of weighing committee.
Report of bill of lading committee.
Report of committee on highway transportation.
Report of committee on perishable freight handled in refrigerator and heater cars.
Report of membership committee.
Report of organization committee.
Report of special committee on railway leases and side-track agreements.
Report of special committee on prepayment of freight charges on shipments destined to Canada.
Report of special committee on telegraph liability.
Report of special committee on rules covering loss and damage to coal.
Report of special committee on detention to carload freight on account of lost billing.
Report of special committees.
Report of treasurer.
Report of finance and auditing committee.
New business.

There will be a dinner the evening of November 18. W. J. L. Banham is chairman of the committee on arrangements for the meeting.

### OKLAHOMA TRAFFIC LEAGUE

The Oklahoma Industrial Traffic League, an organization of traffic managers of the state of Oklahoma, has elected the following officers: President, A. P. Rudowsky, McAlester; first vice-president, E. N. Adams, Tulsa; second vice-president, T. H. Pointer, Jr., Oklahoma City; third vice-president, C. F. Williams, El Reno; secretary treasurer, W. H. Boon, El Reno. Directors: H. D. Driscoll, Oklahoma City; H. C. McCord, Oklahoma City; D. D. Decker, Oklahoma City; E. J. Ferguson, Bartlesville; H. R. Conley, Oklahoma City; W. A. Tayman, Enid; H. G. Strubble, McAlester.

## SOUTHWESTERN TRAFFIC LEAGUE

At a recent meeting of the Southwestern Industrial Traffic League, G. J. Vizzard of Little Rock reported that he had taken up with Mr. Leland of the Southwestern Freight Bureau the matter of inadequate information in its rate dockets and that Mr. Leland contended that the plan of the Southwestern lines was no different from that used in other territories. It was voted that the matter be referred to the National Industrial Traffic League in an effort to enlist its aid in procuring more complete information in these dockets.

The following officers were elected: President, C. A. Bland; first vice-president, L. F. Daspit; second vice-president, H. D. Driscoll; vice-president, G. J. Vizzard; secretary-treasurer, F. A. Leffingwell; board of directors, C. D. Mowen, H. J. Fernandez, H. C. McCord, U. S. Pawkett, F. E. Potts, Ed. P. Byars. A vote of thanks was given C. D. Mowen, retiring president.

A short talk was made by W. C. Lindsay of St. Louis, explaining that he was fearful that the cancellation of L. C. L. commodity rates on candy and confectioneries was to be accomplished by the cancellation of the exceptions, making them third class in L. C. L., and that the result would be to get the rates on this traffic up so high as to prevent movement. It was voted that the League get together in favor of doing what is necessary to continue third class ratings on candy and confectioneries in L. C. L. in the Southwest, vigorously opposing any changes.

Attention was called to Supplement 3 of Southern Wholesale Grocers' Association Docket Bulletin No. 413, and it was recommended that the secretary address communications to the presidents of the principal southwestern lines, calling their attention to the recent increases in this territory by the cancellation of L. C. L. commodity rates in addition to the Ex Parte 74 advances, and requesting that these executives instruct the classification committee not to proceed any further with advances in ratings on food articles.

Mr. Daspit of Shreveport brought to the attention of the League the matter of cancellation of through passenger fares from points in Texas via Shreveport and Vicksburg to the southeast, and recommended that the League support the efforts of the Chamber of Commerce of Shreveport to have through passenger fares. The secretary was requested to handle the matter with the interested lines, and demand that the publication of through fares be restored.

## CANADIAN TRAFFIC LEAGUE

At the annual dinner of the Canadian Traffic League at Toronto, the evening of November 3, the thought that the manufacturing interests of the Dominion should co-operate with the railways in an effort to develop a greater Canadian export trade was emphasized by President D. B. Hanna of the Canadian National Railways. The fleet of the Canadian Mercantile Marine, numbering seventy-seven ships, representing 404,000 deadweight tons, was at their disposal, Mr. Hanna said, and the day was near at hand when the Canadian flag would fly at the masthead on the seven seas. He was prepared to put steamships in service between Canada and any foreign country where the business justified the establishment of it. So far as the Canadian Mercantile Marine was concerned, it did not want a bit of subsidizing by the government. This was one of the things that should give the manufacturers and the steamships great hope, and it was most important that new markets for the Canadian export trade be established if Canada expected to get rid of the heavy debt which has been piling up.

"A great amount of criticism has been leveled at me because I will not permit employes in the service of the Canadian National Railways to accept nominations for Parliament," asserted Mr. Hanna. "There has been no attempt on my part to prevent an employe exercising his franchise as a citizen, but when he decides to become a politician the whole country is open to him. We employ men to work and not for the purpose of a divided interest. It is not practical, and as the question has been camouflaged by so many people saying that the liberty of the employe has been usurped, you can readily see the foolishness of it. As long as I have the power to say—and the board of directors back me up—we will not permit politics to interfere with the operations of the Canadian National Railways or the Canadian Mercantile Marine. So far as the present government is concerned no attempt has been made to interfere in any shape or form in the carrying on of our work."

Referring to the application of the railways for increased freight and passenger charges, Mr. Hanna declared that no country in the world enjoyed lower freight and passenger rates than Canada. They were much lower than in New South Wales (Australia), Great Britain and Germany. He believed that Canadians did not realize how much they were indebted to the railways

for the low rates furnished by Canadian railways compared with those of other countries under the British flag. As an illustration of this point, Mr. Hanna said that the Canadian Railways had to haul one and a half tons of freight a mile to earn the price of a five-cent cigar. The increase of rates had not increased in proportion to wages now paid railway men. In 1913 the average wage paid was $706 a year; 1920, $1,860 a year, while the recent increase granted will bring it up to $2,000 a year. Mr. Hanna asserted that he was just as anxious as the men to see that they had a good living wage, but, at the same time, rates should be increased so as to meet the high wages paid. "I know of one case of an engineer running on a small branch line who is paid over $5,000 a year," said Mr. Hanna, "and another instance where a station agent, who sees a train once in a while, and takes down a red lantern at night, receives $350 a month."

Following are the officers for the ensuing year: Honorary president, J. E. Walsh; honorary vice-president, Thomas Marshall; president, F. W. Dean, Hamilton; vice-president, George P. Ruickbie, Toronto; secretary-treasurer, A. H. Thorpe, Toronto; executive committee, Messrs. N. Boyd, W. S. Campbell, S. B. Brown, N. T. Caldwell and L. R. Howe; auditors, W. E. Minte and H. Blaught.

## CO-OPERATION BY SHIPPERS

In a circular to merchants and shippers of El Paso, Texas, F. C. Tockle, manager of the traffic department of the El Paso Chamber of Commerce, says:

"In connection with improper packing and marking, attention is called to a report from the district superintendent of the Western Weighing and Inspection Bureau at El Paso, dated September 28, which shows the following number of packages tendered to carriers at El Paso in defective containers which were refused by the inspectors and turned back to shippers or were recoopered and repaired before being accepted, during a period from January to July, 1920:

| | | | |
|---|---|---|---|
| January | 805 | May | 676 |
| February | 685 | June | 801 |
| March | 752 | July | 426 |
| April | 345 | | |
| | | Total | 4,490 |

"Shippers can do their part in the improvement of service by calling the attention of everyone connected with the handling of shipments to the above facts and taking such steps as will leave no blame for inefficiency on their shoulders. If this is done, then it is up to the carriers to shoulder the blame for poor service, or for damage to shipments. A shipment securely packed, correctly marked and accompanied by plainly written and correct shipping instructions should be handled promptly and delivered safely. If it is not, it is due to negligence on the part of the carriers or to other causes beyond the control of either the carrier or the shipper.

The carriers are, of course, endeavoring to lay the blame for delay to cars on the shippers and it has been stated by them that a freight car is in the possession of shipper or consignee about 37 per cent of the time. There is considerable feeling that the effort of the carrier to throw the chief responsibility for car delay on the shippers is not justified and a proposition is now under way where some shippers will keep an accurate record of car movements, showing actual time cars are held for the purpose of loading or unloading. It is the general belief of industrial traffic men that if such record is kept for a few months it can be shown that the carriers are mainly to blame for the shortage of cars.

"The above is given El Paso shippers so that they may use the information to the best advantage and with the idea of helping in bringing about better service and reducing loss and damage claims."

## PERMISSION TO INCREASE DEBT

*The Traffic World Washington Bureau*

The Union Pacific and the Oregon-Washington Railroad & Navigation Company, in finance dockets Nos. 1070 and 1071, submitted to the Commission the question of whether they were under obligation to ask for permission to make an increase in the funded debt of the Union Pacific to the extent of $115,000 and of the Oregon-Washington to the extent of $567,360. If the Commission is of opinion that permission is needed, then they have asked for it.

This question arises from the fact that, years ago, the two companies issued some of the first and refunding mortgage bonds in the form of pound sterling obligations. The mortgage provided an option for the holder to convert a 100-pound bond into a $500 bond at the rate of 485 plus $15 in cash and a 200-pound bond into a $1,000 bond at the rate of 970 plus $30 in cash.

Unless the holders of pound bonds are permitted to make the change the mortgage becomes due through a breach of one of the conditions and $65,000,000 worth of bonds must be taken care of. In addition, the companies said their credit would be impaired by such a default, hence their query and application.

## FREIGHT CAR SUPPLY

L. F. Loree, président of the Delaware and Hudson, has issued, in pamphlet form, a letter written by him under date of April 29, 1920, to E. N. Brown, chairman of the committee of the Association of Railway Executives appointed to recommend to the Interstate Commerce Commission the purposes for which loans should be made from the $300,000,000 revolving fund created by the transportation act. The subject of the letter is "freight car supply." The letter explains itself. Mr. Loree presents with the letter the several exhibits and charts referred to in it, which are not reproduced herewith. He also reproduces in the pamphlet his article of April, 1913, which contained the figures still quoted by the railroads to show that a freight car is in the possession of the shipper 36½ per cent of its time. He also, in his letter of April 29 to Mr. Brown, repeats the statement that a freight car is in the possession of the shipper or consignee more than one-third of the time. These figures have recently been discredited through the efforts of W. H. Chandler, president of the National Industrial Traffic League. The Loree letter to Mr. Brown is as follows:

"I am very conscious that the views I expressed at the conference yesterday regarding the question of freight car supply were very widely at variance with the report of the Committee, of which I am a member, and, of course, of nearly all of the members of the Committee. I find that Mr. E. J. Pearson takes very much the same view of the matter that I do, and, after consultation with him and uniting his suggestions with my own, we desire to present our views in the following memorandum:

1. For the fullest and most economical use of a railroad there must be a balance of its several parts, that is, an equation must be maintained between the main tracks and sidings, the working yards and delivery tracks, the number of engines, the number of passenger cars, the number of freight cars and the shop facilities for caring for the equipment. In the growth of the American railways from a variety of causes there has accumulated a supply of freight equipment (except refrigerator cars, of which the 20,000 proposed by the Committee is not excessive) that is out of all proportion in its relation to the other elements which alone makes its use adequate and economical.

So much complaint was made about car supply in 1905 and 1906 that, at the beginning of 1907, the railroads collected and tabulated information for the whole country showing the number of cars ordered for loading, the number of cars supplied in filling orders and the number of cars in equipment stock in excess of the cars ordered. The publication of these statistics was abandoned when the Government took over the control of the railroads, but the attached statements and charts (marked Exhibit A, A-1 and A-2) show the situation, and the huge blocks indicating equipment serving no useful purpose are most impressive. It must be kept in mind that these figures are based on the assumption that the orders placed by shippers for cars for loading represent their actual needs, whereas it is common knowledge that these are commonly duplicated at competitive points and usually exaggerated, sometimes most grossly, by nearly all shippers, the hope apparently being that the larger the order the more nearly the actual want will be satisfied. It would seem likely, therefore, that the zero line should be removed considerably lower, especially at times when there is an active movement.

The Exhibit shows that in 1916 the railroads secured the highest average miles per car per day, viz., 26.9 miles. We have reflected on the chart the effect on each year's performance, based on the assumption that a similar mileage had been secured in each of the other years.

In the fall of 1917 an effort was made to secure an increase in the loading of cars and this effort was continued through 1919, the maximum being attained in 1918, when the average was 26.8 tons per car. (U. S. R. R. A. figures.)

The average capacity of the cars in 1918 was 41 tons, thus indicating the average loading as being 65.56 per cent of the marked capacity of the car. It will be noted by Column "H" on Exhibit A-1 that had a similar percentage of the average car capacity been attained in other years, there would have been an increase of 1.3 tons in 1919, 1.2 tons in 1917 and over 3.5 tons per car in the years 1910 to 1916, both inclusive. The reports for January and February, 1920, indicate some reduction in the loading per car, and this was the subject of discussion with Mr. Powell (then Director of the Division of Capital Expenditures) prior to his leaving the Railroad Administration. He informed me that they were no longer in position to insist upon shippers loading to capacity. It is quite evident that if we let the situation go back to the old conditions, we will have a loss of about 4 tons per car in the average loading.

To prevent this the Interstate Commerce Commission should permit a raising of the minimum loading of cars so as to provide that cars shall be loaded to marked capacity, or to the cubical content capacity, as the case may be. Inasmuch as the carrying capacity of cars today is 10 per cent above the marked capacity this gives reasonable leeway for the shippers.

Comparing, for example, 1915 and 1918, the average capacity of cars in 1915 was 40 tons and the average loading was 21.39 tons, or only 53.47 per cent, of the average car capacity. Had the 1918 loading been only 53.47 per cent of the marked capacity, the average loading would have been only 21.92 tons per car instead of 26.8 tons per car.

The United States Railroad Administration's performance sheets show 7.1 per cent of the freight cars as unserviceable on December 31, 1919, as compared with 5.6 per cent on December 31, 1917, a difference of 1.5 per cent; 1.5 per cent of 2,385,476 cars would equal 35,782 cars.

The average mileage made by the cars during the fiscal year ended June 30, 1917, was 26.1 miles per car per day, as compared with 23.1 miles per car per day in 1919. This mileage reflects the cars out of service on account of "bad order" and slowing up of movement due to congestion on the railroads, or failure of the shippers to promptly load and unload.

The average miles per car per day in 1917 were 13 per cent greater than in the year 1919. An increase in mileage of 13 per cent as applied to 2,385,476 cars would result in a saving of 274,435 cars.

2. As stated, during the years 1917, 1918 and 1919, a very determined effort was made to secure a better loading of freight cars and under the spur of patriotic impulse and the recognition of the benefit to the common need, through a common exertion,

the load per car was substantially increased to 65.56 per cent of capacity, viz., in 1918, and, as has already been shown in paragraph 1 above, the railroads secured their highest average miles per car per day in 1916; viz., 26.9 miles.

In Exhibits A and A-1 are shown the effect in the number of cars required to handle the business offered during each of the years 1907 to 1918 inclusive had this increased mileage and increase loading obtained. In Exhibit B and B-1 are reflected the maximum business that could have been handled with the available equipment, if the idle cars had been used, the loading of 65.56 per cent of capacity (as in 1918) and the car mileage of 26.9 miles per car per day (as in 1916) had been attained.

In 1918 the tons carried one mile were three hundred and ninety-eight billions, plus, with an average miles per car per day of 24.9, but the loading in this year reached its maximum of 65.56 per cent, with an average tons per car of 26.88. If, however, the mileage per car per day had been speeded up to 26.9 (as in 1916) the available equipment would, under like operating conditions, have handled four hundred thirty-three billion tons, plus, one mile, or an increase of 8.74 per cent.

In 1919 the miles per car per day decreased to 23.1 but the loading in this year reached 64.66 per cent of capacity. The total tons carried one mile amounted to three hundred sixty-two billions plus. Had the cars been loaded up to 65.56 per cent, as in 1918, and speeded up to the mileage of 1916, the available equipment, under similar operating conditions, would have handled four hundred fifty billions plus, or an additional tonnage of eighty-eight billions, or 24.3 per cent.

The Exhibit also reflects that the number of tons handled one mile in the years 1917 and 1918 was in excess of three hundred ninety-four billions, or more than one hundred billions in excess of any of the years 1906 to 1915, inclusive, with the exception of the year 1913, when it was approximately ninety-three billions in excess. When it is considered that the years 1917 and 1918 covered the war period, and when production was speeded up to the maximum, these years may reasonably be said to reflect maximum production and the maximum that may be expected for the next two or three years to come. But conceding that these tonnages will be materially exceeded, the statement reflects that if the maximum mileage and maximum loading are applied, the present freight equipment can handle a tonnage over 13 per cent in excess of the tonnage of 1917 and 1918.

It should be borne in mind, also, that during the three-year period, 1917, 1918 and 1919 (or war period) our exports reached their maximum. In 1916 the ratio of imports to exports was over 50 per cent, while during the three-year period, 1917 to 1919, inclusive, the ratio of imports to exports was 45.4 per cent. This clearly illustrates that because of our exports a larger percentage of business handled in connection with foreign trade was destined to seaboard during the period mentioned than obtained in the years previous thereto, thus producing a loaded movement largely one way and a material increase in empty car mileage which would not have resulted in normal periods when the traffic would have more evenly balanced. This to our mind was the contributing factor in causing an empty car movement during this three year period of over 31 per cent of the freight car mileage as compared with 29.8 per cent obtaining in the year 1916.

3. The attached sheet, marked "Exhibit C," is a consolidated statement of the track mileage, freight equipment, its increase or decrease, and the use made of the same for the years shown, on all roads in the country over 500 miles in length. From this it will be seen that there has been very little change in the number of cars per thousand ton miles moved since 1906, and that the number of cars added annually to the equipment stock during that period was 41,572. This, however, does not fully reflect the effect on the movement of traffic since the average capacity of the cars had increased from 32 tons in 1906 to 41 tons in 1918, or 28 per cent. It is true that many cars were purchased annually above this number, but many of them were purchased in replacement of cars of light capacity or otherwise considered obsolete, and this special demand for new equipment is now largely eliminated since there were on June 30, 1916 (the latest date for which I have the information) only 86,506 cars under 60,000 lbs. capacity and 665,494 cars from and including 60,000 lbs. but under 80,000 lbs. capacity, of all Class I and II lines in the country.

Consideration must also be given to the effect of changes in construction from the old wooden sill car, supported by hog chain truss, to the present practice of steel underframes, one consequence of which is the loading of the modern equipment to 10 per cent of its marked capacty. If to the marked capacity of the equipment of 1919 (ninety-eight million tons plus) this 10 per cent be added the capacty would be one hundred and eight million tons plus, as contrasted with fifty-nine million tons in 1906, or an increase of over 83 per cent. The ton mileage in 1906 was two hundred and fifteen billion plus, and if the loading in that year had been 65.56 per cent of capacity, as in 1918, the equipment of 1906 would be capable of two hundred and fifty-nine billion tons plus. The increase in ton miles in 1918 as compared with this figure is one hundred and thirty-eight billions plus, an increase of 53.52 per cent. The increase in car capacity offered was evidently nearly 30 per cent over the increased demand, but if the cars had been utilized to their full excess above marked capacity, the margin might have been in excess of 30 per cent. This could only be ascertained by careful analysis of other factors affecting the use of the equipment. (See Exhibit "D").

4. Owing to the seasonal demands made upon equipment, the peak of the load is usually about the 10th of October, and one of the questions always to be borne in mind is the extent to which this should be taken care of by the railroads, or by grain elevators, cotton platforms and other reservoirs for storage. It is evident that it is not to the interest of the country that equipment for which use can only be found for a period of perhaps six weeks in the fall should be supplied under the penalty of standing idle during the balance of the year.

5. It is evident then, to meet the demands of the traffic, one of two courses may be taken:

(a) Substantial additions may be made to the freight equipment stock. This will involve large additional investment and expensive upkeep of the same, a large amount of idle equipment over the major portion of the year, and a substantial increase in all the freight elements of the railroad. Many years ago the Interstate Commerce Commission consolidated in their published statistics the items of "Road" and "Equipment" in the Balance Sheet, but based on the Commission's estimated cost of reproduction new of the Kansas City Southern Railway, it would appear that upon a line where the equipment is ample the value of the equipment is approximately 25 per cent of the Road and Equipment Account. It would indicate that for each dollar spent for new equipment three additional dollars would have to be spent for its economical use.

(b) The serviceability of the existing equipment can be substantially increased in the following ways:

By heavier loading of cars, a great stimulus to which would be the raising of the minimum weights for carload shipments, and this is especially important in the loading of cars moving in the direction of the current of loaded traffic, having the effect of reducing the amount of empty car mileage in the return direction. As an example, approximately 60 per cent of the cars going into New England loaded now return empty and to the extent heavier loading can be obtained, the number moving into New England would be reduced and the empty mileage correspondingly reduced.

A reduction in the detention of the cars, a great stimulus to which would be an adequate and flexible application of demurrage penalties.

A change in the reconsignment, fabrication during transit, and other similar practices, limiting many of these privileges and making a charge for others designed to reduce their number and use; similar action on unlimited free time allowances covering detention to cars billed on through rate via rail and water routes, free time allowance at Pacific ports; detentions due to use of cars for movement of shipments from shipper's warehouse to freight station, and use of cars for transporting shipments from one point to another in the same city.

A marked restriction in the use of "to order" bills of lading, the absolute prohibition of some and a charge designed to the restriction of other uses of this device.

A gradual elimination of the use of the bill of lading as a commercial instrument, which should be possible with the growth and the improvement of the banking system of the country, and the restriction of the bill of lading to a receipt for goods and an obligation for their carriage. This would have a potent effect on holding back unwarranted shipments now greatly stimulated by the ability to collect on the sale of goods as soon as a bill of lading covering them is issued.

"For more than one-third of its life the car is in the possession of the shipper or receiver of freight; that is, the 2,242,379 revenue service freight train cars shown for Class I carriers as of June 30, 1916, by the reports of the Interstate Commerce Commission, approximately 747,459 are so located. It is not too much to say that it is within the power of the Interstate Commerce Commission, by the resolute exercise of its authority under circumstances that would not distress the shipper but would mean much toward his relief, to add to the effectiveness of the freight equipment of the country the equivalent of at least one-half million cars, and this not only without adding one dollar to the 'capital account,' but producing changes in the practice that would cut many thousands of dollars from the operating expenses.

"Unfortunately the tendency seems to be in the opposite direction, as indicated by the Commission's circular letter of April 27, last, regarding minimum weights and proposed double loading of grain and grain products, in which it is suggested that the minimum weight might be reduced from 60,000 to 40,000 pounds and that a certain amount of circuitous and back-hauling be permitted, the basic idea of double loading having already been shown to be impracticable of accomplishment to any considerable extent, due to the fact that it is a too highly specialized arrangement to fit into railway operation.

"Nor does this exhaust the possibility of better use of present equipment. The freight car is in actual train movement on main line track on an average of only two hours and twenty-four minutes out of each twenty-four hours. The speed of freight train cars can be increased only at the sacrifice of a part of the tonnage which the locomotive can haul, and the abandonment of some of the collateral economies, increase in the expense of upkeep of the track, of fuel and supplies used and an increase in the danger of operation. Were is possible to increase the speed so much as 15 per cent the gain in time would be only 22 minutes, involving sacrifices that the railroads could not possibly afford. Eliminating this feature there remains to be accounted for about one-half the life of the car. About 28 per cent of this life is accounted for in road delays, movement through intermediate yards and interchanging between railroads where more than one railroad is involved, 5 per cent in the movement of surplus cars, 9 per cent in movements connected with the keeping of the cars in repair and 11.6 per cent in the movements connected with the relation of the railroad with the shipper or consignee. If, in the immediate future, the new moneys applied to railroads were largely spent in eliminating and reducing these delays, which involve fully one-half the life of the car, the addition to the effectiveness of the equipment would perhaps not equal that gained by the other measures suggested, but it might reasonably approximate it.

"All of the above relates to what might be considered the normal practice of the railroad, but conditions are now very abnormal in that during federal control all restrictions of ownership were ignored and the cars were scattered throughout the country and their repairs sadly neglected. Efforts should now be made to bring them back as promptly as possible to the owning line and every effort should be made to as rapidly as possible put them in proper repair. Labor is, of course, also much less effective than formerly owing to the many restrictions thrown about its employment during the period of the war, of which perhaps none is quite so costly as the imposition of the eight-hour day, with penalty for overtime. This very much increased the number of men on the payroll and it is leading to changes in practices uneconomical in themselves, but not so costly as the penalties imposed."

### Exhibit D

(a) Among these conditions was the increase in manufacturing caused by the war itself, which traffic has now ceased.

(b) The increase in exports for use of other countries, such as foodstuffs, fuel, cotton, clothing, etc., other than war material.

This traffic continued in considerable volume during 1919, but

should rapidly decrease during the next three years, at the end of which time conditions ought to be relatively normal.

(c) Prior to the return of the roads to their owners, the United States Railroad Administration ordered all box cars in good condition to be sent west of the Mississippi River for loading of grain. Refrigerator cars were ordered to Texas by the Car Service Bureau of the Interstate Commerce Commission to handle the fruit crop, though because of failure of said crop these cars are now returning empty.

(d) The car shortage now reported from some sections is due to the unbalanced distribution of the cars, to a large degree, and will disappear when the cars get back to their normal location.

(e) There have been some serious diversions of freight, increasing the demands made on the railroads, as, for example, the diversion of 4,600,000 tons for New England to the all-rail route, as against all-rail to tidewater and then by barges. Presumably this tonnage should shortly get back to the water route in view of the fact that over 50 per cent of the people in New England live within 25 miles of tide and 75 per cent live within 50 miles of tide, while the movement of this freight into New England involves an additional rail haul of probably 400 miles per car.

(f) The grain crop, particularly wheat, has been abnormal on account of the exceedingly high prices, encouraging people to plant wheat instead of raising cattle and other farm products. It is presumed that the wheat production will be reduced to normal, thus correspondingly changing the demands made on the railroads.

On December 31, 1918, the aggregate number of freight cars owned was 2,385,476. One per cent thereof would be 23,855. On the basis of $2,800 per car, the additional investment for each 1 per cent increase in the cars owned would be $56,794,200.

Each 1 per cent increase in cars would involve an increase of 300 road freight locomotives, which, at $70,000 each, would cost $21,000,000.

Therefore, each increase of 1 per cent in freight cars will involve an increased investment of $77,794,200 for road locomotives and freight cars. It is also necessary to consider that an increased number of cars and locomotives requires increased space on tracks and in sidings, yards and terminals, for their handling; all leading to added capital requirements, amounting, at a ratio of three to one, to $233,382,600, or a total added investment of $311,176,800.

Clearly, any conclusions reached on the basis of the unusual conditions which have confronted the railroads, as a result of the war, would be most misleading and it is quite apparent that it is essential to give due weight to all the elements involved, to separate the temporary from the permanent and to wisely allocate our very meager resources if we are to avoid disaster.

## COST OF GOVERNMENT OPERATION

*The Traffic World Washington Bureau*

A summary of the annual reports of class I roads in 1919, made public by the Commission November 8, shows that if all roads of that class had been under control and the government was obligated to pay them as much as they reported as due them from "lease of road," the loss to the government in that year, on account of roads of that class alone, would be $404,082,475. But not all the roads were under control, so the total loss for that year will probably be not much more than $385,000,000, in round numbers.

In that year, according to the summary, the operating income, as defined in the federal control law, amounted to $515,133,225. According to the reports of the class I roads to the Commission, the government, as the party having the roads under lease, was obligated to pay $920,215,730.

The facts set forth in what might be called a controversial form are not assembled in the summary in the way they are here put down. No mention is made of loss to the government.

"The income from lease of road by the corporations under federal control included in these summaries is shown as $920,215,730," is the way the Commission's report is given to the public. No responsibility for the accuracy of the figures is assumed by the Commission. On the contrary, it is set forth that "as is customary in the preliminary abstract, the reports are tabulated without correction." With regard to the claim of the railroads that the government was obligated to pay them $920,215,730 for the lease of their property, the summary said: "This includes the rental from the United States government so far as accrued by the corporations on their books." The aggregating operating income of $515,133,255 is also the figure of the companies, not of the Commission, having been taken from the reports of the carriers, without any attempt on the part of the Commission to check the reports with a view to the elimination of errors.

The amount of rent the government is obligated to pay shown in the summary is greater than usually assumed in the calculations carried out with a view to showing how expensive government control was, over and above the costs caused by the higher rates brought into operation in June, 1918. The assumed amount of the rent, for all classes of roads, has been $900,000,000. According to this summary, the amount of compensation as rent claimed by the class I roads under control is greater than the assumption as to the amount of the rent for all roads taken over by the government, by something more than $20,000,000.

This summary does not include the cost of the central and regional organizations of the Railroad Administration. It is a mere gathering together of the reports of the class I roads under federal control and such a summation cannot include the expenses of the Railroad Administration's governing bodies, because the Director-General and his staff were not carried on the payrolls of any corporations.

Some of the corporations reported having had operating expenses, although the government was operating the properties. The fact that such items appear is explained by the fact that some of the expenses of 1917 were not paid until after the advent of federal control, wherefore the items could not be included in the accounts for the year in which the expenses were actually incurred.

This statement does not cover the reports filed by lessor companies. Such companies, subsidiary to class I companies, in 1918 reported a property investment of $3,071,378,508. The report is in six parts. The first covers the reports of class I roads the property of which was operated by the government; the second is a summary of the reports of federal operations; the third is a summary of class I roads not under federal control; the fourth is a summary of the corporate reports of class I switching and terminal roads, the property of which was operated by the government; the fifth is a summary of the reports of federal operation of such switching and terminal companies; and the sixth is a summary of the reports of class I switching and terminal companies not under control.

The total property investment account of the class I roads under federal control, exclusive of lessor companies, as shown by the reports, was $23,244,770,032, of which amount $14,979,884,330 was represented by investment in road and equipment. They had a credit balance of $1,719,028,465.

## NEW CANADIAN RATES AFFECT TRADE

(Consul E. A. Wakefield, Prince Rupert, British Columbia, Canada, October 21, in Commerce Reports)

Canadian railway freight rates were recently increased from 35 to 40 per cent. The immediate effect has been to practically stop lumber shipments from the Prince Rupert consular district to the United States.

During the past year a thriving lumber business with the eastern United States had been established by British Columbia lumbermen. Fully 20,000,000 feet of spruce and 60,000,000 shingles were exported by rail from this district to the States during the last 12 months. The trade in lumber cannot possibly continue, according to local lumbermen, as the new freight tariff adds from $7 to $8 per thousand feet to transportation charges. Whether the trade in shingles will be similarly affected is difficult to say at present, but the general opinion is that freight rates must be reduced decidedly if the lumber export trade by rail is to continue. The only lumber now being shipped is the lumber bought or contracted for before rates were raised. Spruce mills on the Queen Charlotte Islands are closed or closing. Local mills adjacent to the port and along the Grand Trunk Pacific railway are closing down or curtailing operations.

Strong protests have been forwarded to the Canadian Railway Commission in connection with the increase as applied to fresh and frozen fish shipments to the United States. The big fish buyers frankly state that the increase will seriously interfere with the fish business and probably stop shipments of low-grade fish.

## LOAN APPLICATIONS DENIED

*The Traffic World Washington Bureau*

The Commission has denied an application of the Maxton, Alma & Southbound Railroad Company, which operates a short line in North Carolina, for a loan of $63,546 from the government revolving fund. The Commission held that the prospective earning power of the applicant was doubtful and that the security offered for the loan was inadequate. It further held that "the public necessity for the applicant's line of railroad is relatively small."

The applicant operates 15.5 miles of main line railroad extending from Rowland to Alma, North Carolina, at which latter point connection is made with the Seaboard Air Line railway. The Commission said the applicant's line forms one side of a triangle of which the Seaboard Air Line, between Alma and Pembroke, and the Atlantic Coast Line, between Pembroke and Rowland, make the other two sides.

"Apparently no part of the line is more than about six or seven miles from stations on the main-line railroads," the Commission said. From 1916 to 1919, inclusive, the Commission found, the deficit in net income of the applicant was $12,043; January to July, 1920, both inclusive, the deficit in net income was $5,482.

The application of the Electric Short Line Railway Company, operating 54.50 miles of main line track and 8.05 miles of sidings, between Minneapolis and Hutchison, Minn., for a loan of $42,250, has also been denied.

The Commission found that the actual net income of the applicant for the years 1916 to 1919, inclusive, resulted in a deficit each year as follows: 1916, $19,630; 1917, $65,937; 1918, $46,916; 1919, $70,527.

"The prospective earning power of the applicant being doubtful, the security offered is inadequate," the Commission said.

The company asked for the loan to aid it in making additions and betterments to equipment and way and structures at an estimated cost of $83,000.

# MUST RATES GO HIGHER?

*The Traffic World Washington Bureau*

New England railroads believe they are in such critical condition that there must be a quick increase in their revenues or receiverships will come to some of them. They are in such condition, they say, that even under the recent 40 per cent advance in rates they are threatened with a deficit of $36,000,000 at the end of the first year of operation under private control after the twenty-six months of government control.

An additional increase of 35 per cent in freight rates and an advance to four cents a mile for passenger fares is under consideration. An alternative proposal is that the Commission quickly dispose of the formal complaint of the New England railroads in which they ask for a larger division out of joint through rates, made in connection with eastern trunk lines, and give them more money in that way.

The fact that the New England roads consider themselves to be in such sore straits was brought out at a conference held at the Commission's building November 10, in which the railroads, New England manufacturers, and New England state commissioners participated. It lasted for three hours and broke up with the understanding that there should be an informal conference between the New England interests and the trunk lines under the auspices of the Commission with a view to disposing of the question whether the trunk lines are paying proper divisions to the New England carriers.

"I hate to talk about receiverships," said J. H. Huestis, speaking for the Boston & Maine, "but the fact is that if we do not pay the interest on our bonds, they are no longer good as securities for savings banks and other institutions of that character."

No public mention was made of the alternative of a 35 per cent advance in freight rates and an increase in passenger fares to four cents. W. H. Garcelon, for the Arkwright Club, after hearing several hours of talk, asked the blunt question as to whether it meant another increase in rates. He did not get a direct answer, but Mr. Huestis made the remarks about receiverships heretofore mentioned.

The conference was held under the chairmanship of Vice-President Buckland, of the New Haven. He submitted figures showing that, on the basis of what was achieved in September and what it was estimated the October figures would show, at the end of the first year of private operation, after the twenty-six months of federal control, the roads will be struggling with a deficit of $36,000,000.

The railroads said there were two ways for dealing with the situation. The suggestion of a 35 per cent advance in freight rates and an increase in passenger rates to four cents a mile was kept in the background because the railroad men, especially Vice-Presidents Buckland and Campbell, of the New Haven, were in the attitude of presenting the problem that confronted them as one the solution for which would have to be suggested, in the first instance, by the industries dependent on the railroads for their existence.

E. Kent Hubbard, for the Connecticut Manufacturers' Association, said the sentiment of shippers in his part of the country had undergone a radical change and that it was now sure that the New England railroads were entitled to help and more considerate treatment than they were, for instance, at the time the public was finding fault with the New Haven and other roads. His idea was that the duty of solving the problem rested on the Interstate Commerce Commission and that it could discharge that duty by deciding on a fair division of the through rates. The answer to the problem, he said, the New England people would expect from the national body.

C. H. Tiffany, who said the overwhelming tonnage of the shippers represented by him was carload, contended that one of the first things that should be done was to change the percentage relationship of the classes and the torpedoing of all L. C. L. rates that are below their appropriate classes.

Another point made by him to show that the L. C. L. rates were too low was that five or six years ago expenses on a carload of L. C. L. stuff was about $8, while the expenses for carload traffic was about twenty cents. He was quoting from memory, but Vice-President Campbell backed him up. Now, Mr. Tiffany said, the carload expense was about forty cents, while the cost of L. C. L. freight for the freight house service alone was about $14.

That fact, he said, indicated that some class of shippers was not paying its share of the cost. The paper and pulp manufacturers, he said, were willing to take their medicine.

Commissioner Bliss, of Rhode Island, said that public officials, in times past, had been criticised by shippers, especially those in New England, for suggesting that the manufacturers of that part of the country were not paying enough on their L. C. L. shipments. He said that now the shippers were beginning to realize that unless the railroads are supported they could not give service.

The conference called by the New England railroads to consider what might be done to increase their revenues, and the figures concerning September earnings for the railroads of the whole country, prepared by the Bureau of Railway Economics, have served to draw sharp attention to the results following the permissive order of the Commission in Ex Parte No. 74. The New England railroads, in support of their suggestion that they are likely to be in a bad way, made estimates for October and from them they drew their figures that if the rest of the first year after the ending of all vestiges of government control and guaranty is as bad as the first two months, their income will be $36,000,000 less than the 6 per cent the transportation law says rates shall be made to yield, on the value of the property devoted to transportation.

According to the figures prepared by the Bureau, September returns from 197 roads, having a mileage of 225,000, show a net railway operating income of about $75,000,000, an increase of only 3.3 per cent over September, 1919. Operating revenues increased 23.8 per cent, while operating expenses went up 27.1 per cent. The Bureau estimates that, on that basis, the roads for which the Interstate Commerce Commission issues monthly summaries will show a net railway operating income of about $80,000,000. That sum would be about $29,000,000 short of the sum the roads should earn in September to produce the net which is necessary to give the roads a return of 6 per cent.

Officially, the Commission knew nothing about the thoughts of the New England roads when the latter called the conference of representatives of shippers and of New England state commissions, which was attended by Commissioner Eastman, first because he is a New England man and, second, because the formal complaint of the New England railroads asking for larger divisions from their eastern trunk line connections has been assigned to him for handling.

The figures prepared by the Bureau of Railway Economics cover the country as a whole, but not each section separately, so the condition of the eastern trunk lines and the New England carriers is not disclosed by them. In the last analysis, it is believed, the condition of the eastern trunk lines will become a heavy factor in the question of divisions, the idea being that it would be idle for the Commission to direct the trunk lines to give the New England roads larger divisions, if it could be shown that such an order would have no result other than that of bringing the income of the trunk lines below the level set in the rate section of the transportation law.

It was suspected, during the discussion caused by the New England conference, that the returns for the eastern trunk lines for September and October would indicate that they were falling behind the level decreed by the law almost as much as their New England connections. The New England lines, however, for many years have believed they were not obtaining a fair share of the money paid by shippers on joint rates from the middle west, on tonnage originated by the trunk lines. They also have had a like idea about the joint rates on tonnage originating beyond what is loosely called the middle west, as to which the trans-Missouri and transcontinental lines may be the originators.

Larger divisions of joint rates from territories west of the ones in which the eastern trunk lines are the originators, it has been suggested, would have an effect on the net railway operating incomes of railroads in the southern and western classification territories, if not in the mountain-Pacific, so that while the conference on November 10 was supposed to be wholly local to New England, the question under discussion there was national in its scope.

About the only suggestion made there as to a way out of the difficulty that could be described as purely local, was that made by C. H. Tiffany, who proposed bringing all L. C. L. rates now below the class standard up to that standard, and a revision of the Anderson scale so that the relationship of the lower classes to first will be expressed in higher percentages. He said that New England has many L. C. L. rates below class standards and the evidence points to revenue from such tonnage insufficient to do much more than pay the station cost of handling it, without thought of any return on the property devoted to such transportation.

He was not advocating that as a thing desirable in itself, but merely as an alternative for some of the other plans that had been hinted at or suggested. He seemed to think that of all the schemes suggested, the one calling for a general advance in freight rates and passenger fares was most likely to be adopted.

The attitude of the railroads and of at least some of the shippers' representatives was that the burden of finding a way out was upon the Commission, and not on the railroads. Receiverships as the way out was the only suggestion that did not ultimately hold the Commission as the body required to bear the burden. That suggestion, however, was denounced by Judge Anderson, former Commissioner, as of no value because the usual result so far as the Boston & Maine and the New Haven are concerned was a change in the directorate, the refunding of low-rated securities with higher rated evidences of indebtedness, and the impoverishment of honest investors. He pointed out that some of the roads have securities outstanding at 3.5 per cent interest which would have to be refunded at possibly double that rate of interest. But he had no definite recommendation to make on the point at issue—namely, as to how the New

England lines are to obtain more money, so that they may come, in the matter of net, within the terms of the transportation law.

That the Commission was inclined to regard the primary responsibility as being its own was inferred from the fact that, as an outcome of the New England conference, it was understood that the Commission should take up the matter of division in conference, in an informal way. At first it was thought the conference would be wide enough to include the trunk lines and the New England roads, but on November 11 the understanding was that the consultation would be confined to the commissioners.

At the conference and after it, the $36,000,000 mentioned in the conference was generally called a deficit, but technically the thing about which the conferees were talking was not an operating deficit. It was the margin between the expected income and the income the law says they are entitled to earn, if the law means that the New England part of the eastern group, as defined by the Commission in its report on Ex Parte No. 74, is entitled to a net railway operating income of six per cent. The eastern group as a whole is entitled to earn six per cent, but the question is as to whether the New England part of the eastern group is entitled to be heard to claim that it is entitled to six per cent, considered without regard to the rest of the group.

## HARDING'S MARINE POLICY

*The Traffic World Washington Bureau*

It is believed that one of the first things President Harding will do when he takes office will be to send notices to foreign nations that the United States desires to withdraw the promise, made by it in thirty odd treaties, to refrain from imposing discriminating duties and other preferences for American shipping. In other words, he will carry out the spirit of the Jones shipping law, even if he is not acting within the letter thereof. The letter authorizes and directs the President, within ninety days of the passage of the act, to give such notice.

There has been some discussion as to what effect, if any, was produced on the Jones shipping law by President Wilson's refusal to give the notice directed by it. The contention has been made that, the ninety days having passed without action by the President, that part of the statute is dead. The point, however, is not deemed of importance when it is remembered that it is within the President's power to initiate negotiations looking to the framing of new treaties or the modification of old ones.

President Wilson could have initiated modifications such as the Jones law suggests the United States desires to make. He did not need a statute to authorize or direct him to give notice. He could have done that kind of work without authorization of Congress. Therefore, it is pointed out that, regardless of the Jones law, President Harding can initiate such changes in the treaties, and when he thinks it desirable to do so. But with the Jones law back of him as the expressed sense of Congress, he knows there is reason for modifying the treaties, although under the decisions in the Cherokee tobacco and the Head Money cases, it might be contended that the Jones law abrogates the parts of the treaties by which the United States has bound itself not to discriminate against foreign ships or foreign goods.

Prior to the passage of the Underwood tariff law and the Jones shipping act, the party which is to go out of power on March 4 was rated as being opposed to any phase of a policy of discrimination in favor of American commerce, or protection. The passage of the Jones shipping bill was opposed by some Democrats as being in violation of the principles of the party. Secretary Colby strongly urged President Wilson to veto it, but he did not. Instead, he decided, after he had signed the measure, to ignore that part authorizing and directing him to give notice of the abrogation of the promise not to discriminate.

That refusal has not produced any friction, because the discriminating part of the Jones shipping law, at the instigation of the Shipping Board, has been suspended until January 1. Unless and until that board certifies that there are enough American ships to serve a port or section of a coast, the discriminating parts of the statute do not become operative.

Inasmuch as the situation with regard to ships is becoming so easy that a good many of the Shipping Board ships are not being operated on the routes for which they were intended, the time when the discriminating part of the law will become operative is not far off.

Whether, in view of the position taken by President Wilson, the present Shipping Board will ever bring the discriminating part of the law into operation, is one of the questions that cannot be answered. President Wilson, in explaining why he declined to give notice, did not even intimate that he was opposed to the policy laid down in the law—namely, that of discriminating in favor of American ships. It is suspected, however, that the position of the party of which he is a member, in opposition to discriminating practices, may have influenced him in making what may be regarded as a belated veto. Should the Shipping Board members obtain the idea that that is why he refused to give notice, they might be tempted to consider it their moral duty to "follow their leader" to the extent of putting off the day when it shall become effective, by refusing to make the certificate that would bring it into operation.

All questions of that kind, however, in view of the change of administrations in March, are regarded as more or less academic, or at least of comparative unimportance, because the views of Senator Harding will control the future policy of the Board.

Another thought among those interested in shipping is that Senator Harding's trip to the canal zone signifies a desire on his part to know the physical facts with regard to the canal before he asks Congress to repeal the law, forced through by President Wilson in his first term, that puts tolls on American ships just the same as if they were flying the flag of some country that did not contribute a dollar toward the construction of the canal.

President Wilson procured the passage of the law that imposes tolls on American ships on a statement that left the impression that some foreign power was menacing the United States and that he did not desire to be responsible for the consequences should this country decline to allow the free passage of American ships through the canal built with American money. For years it has been the thought in Washington that it was the British government that made the representations that appeared to have caused President Wilson to have chills, but nobody knew.

Repeal of that tolls law and the enforcement of the Jones law, a good many American shipbuilders and ship owners are suspected of believing, will cause a boom in shipbuilding in American yards, especially if prices can be got down to a reasonable level. Many plans for building ships were made tentatively last spring and summer and then laid away, first, because there was a slump in ocean-carrying rates, and, second, because of the uncertainty produced by the political campaign and the President's declination to carry out the Jones law. That declination created the possibility of the statute book carrying a law intended to promote the construction of an American merchant marine which the executive head of the government refused to carry out.

If and when it can be known that Harding will not only carry out the Jones law, but will appoint a Shipping Board that will hurry that statute into effect, and if the tolls statute can be repealed, then the boom in shipbuilding is expected to begin.

## OCEAN FREIGHT RATES

*The Traffic World Washington Bureau*

American ships must be used by American exporters if ocean freight rates are to be kept at reasonable levels, Admiral Benson, chairman of the United States Shipping Board, said, November 8. He predicted that rates of foreign vessels would go up if the American merchant marine is forced off the seas.

Maintenance of ocean freight rates on a basis whereby the most efficient operators of vessels will obtain cargoes, regardless of nationality, is the policy of the board, the chairman said, adding that the board does not contemplate a course of action designed to drive out foreign competition.

Admiral Benson issued a statistical statement showing the number of vessels, American and foreign, arriving with cargoes in American ports for the week ending October 23. The statement shows that 158 American vessels arrived with cargoes in that week as against 109 foreign vessels with cargoes, while 121 foreign vessels arrived in ballast against 75 American vessels. The figures relative to the number of vessels arriving in ballast go to one of the charges made in the report to the House select committee on Shipping Board operations that many Shipping Board vessels returned to United States ports without cargoes or in ballast. The statement issued by Chairman Benson follows:

Arrivals for entire country, both American and foreign, showing number of vessels arriving with cargo, in ballast and in transit, also inward bound tonnage handled in American bottoms as compared with freight bottoms:

| | Arrivals. | Cargo tons. | With Cargo. | In Ballast. | In Transit. | Cargo Reports Missing. |
|---|---|---|---|---|---|---|
| No. Atlantic— | | | | | | |
| American ..... | 127 | 194,944 | 76 | 44 | 7 | 44 |
| Foreign ....... | 173 | 118,513 | 73 | 94 | 6 | 35 |
| So. Atlantic— | | | | | | |
| American ...... | 9 | 15,592 | 2 | 7 | 0 | 0 |
| Foreign ........ | 7 | 12,010 | 2 | 5 | 0 | 1 |
| Gulf | | | | | | |
| American ...... | 65 | 102,592 | 48 | 16 | 1 | 15 |
| Foreign ........ | 32 | 23,022 | 13 | 19 | 0 | 4 |
| Pacific— | | | | | | |
| American ...... | 44 | 34,334 | 32 | 8 | 4 | 11 |
| Foreign ........ | 25 | 21,299 | 21 | 3 | 1 | 9 |

The plans of the board for reduction of expenses are being carried forward, the chairman said. He said the object was to reduce to a minimum the expense of supervision by the board of operators of Shipping Board vessels and that operators would be expected to assume duties that have been performed by the division of operations. He said the plans of the board included a marked reduction in the supervisory forces of the organization but that there would be no reductions immediately.

Referring to the protests received by the board from foreign shipping lines and also some Shipping Board operators relative

to the establishment of a base differential of 5 cents a hundred pounds on flour rates over wheat rates, the chairman said he regretted the board had acted in the matter without taking it up in conference. The establishment of the differential was urged by the flour milling interests of the country and Admiral Benson said he had concluded their request was fair. He did not indicate, however, that there would be any change made in the ruling in the near future.

The situation with respect to the differential in ocean freight rates on wheat and flour is set forth by the foreign commerce department of the Chamber of Commerce of the United States in the following statement:

"The exports of wheat in September of this year were thirty and three-fourths million bushels, against seventeen million bushels for September, 1919. At the same time exports of flour this September were only nine hundred thirty-eight thousand barrels, compared with one million seven hundred and sixty-four thousand barrels in September a year ago.

"The flour millers of the United States have been attributing the falling off of export orders for flour and the stimulation of the export of wheat to the high differential which has been maintained during the past several months in the ocean freight rates on flour above the rates on wheat. The United States Shipping Board heard from various individual shippers and organizations protests against the maintenance of the high differential.

"The foreign commerce department committee of the Chamber of Commerce of the United States went on record as being opposed to the maintenance of any unwarranted discrimination in the ocean freight rates. This recommendation, approved by the board of directors of the national chamber, was communicated to the United States Shipping Board. It was pointed out that the maintenance of an unwarranted differential against a manufactured product as compared with the raw material is likely to have a very adverse effect on the manufacturing industry, and the various tributary and allied industries.

"Toward the end of October the Shipping Board released an announcement to the effect that on Shipping Board steamers from November 1, 1920, the base differential on flour above the rate on wheat would be 5 cents per 100 pounds. Before the operation of this new base differential, the rate on flour has for months been above the rate on wheat by 25 cents or more per 100 pounds. Under date of October 26, the foreign commerce department of the national chamber received from an official of the Shipping Board a letter commenting on the new differential and concluding as follows: 'I understand this adjustment is entirely satisfactory to the milling interests and hope that it may accomplish what they say—that is, a great increased sale of American manufactured flour in foreign countries.'

"The effect of the reduction of the differential on Shipping Board vessels remains to be seen. As the matter now stands, the millers contend that the rate on wheat and the rate on flour should be on a parity if the American export trade in flour is to continue."

### Rates on Corn and Oats

Coarse grain products interests on November 11 asked the Shipping Board to establish ocean rates on corn and oats, in particular, under the rates on products, substantially the same as it established on wheat and wheat flour ten days before. On wheat and flour the difference was made five cents, so as to encourage the transportation of flour instead of wheat. Prior to that time the rates on wheat encouraged the exportation of flour. The differential was established for the commercial purpose of encouraging the milling of wheat in this country instead of abroad.

The demand for the establishment of a similar differential on the coarse grain was made chiefly by representatives of corn and oats millers and exporters.

Steamship operators opposed the grant of a differential, contending that as a transportation problem the shipment of the grain is preferable to the shipment of the products. They objected to the differential on wheat and wheat flour, although the question of reopening that matter was not under consideration.

The arguments of the millers and exporters were heard for the Board by Robert A. Dean, special assistant to Chairman Benson; Assistant Directors of Operation Keens, Felton, Jackson and Murphy; and V. J. Freeze, traffic manager for the Shipping Board at Baltimore.

T. M. Chinington, secretary of the Corn Millers' Federation, was the chief spokesman for the corn millers. The steamship operators opposing the grant of a differential were represented by B. M. Flippin, who spoke for the Gulf Shipping Conference; and John Pennington, for Phelps Bros. & Co. Others participating in the conference were: R. C. Lee of Moore & McCormack, New York City; H. R. Warner, representing the North Atlantic Spanish-Portuguese Conference; J. T. Lykes, representing the Gulf Shipping Conference; J. H. Ghenung of the Purity Oats Co., Keokuk, Iowa; Russell M. Wagar of C. W. Wagar & Co., Philadelphia, distributors of corn by-products; J. H. Welling of the Baltimore Oceanic Steamship Co.; H. H. Kennedy of the National Oats Co., St. Louis, Mo.; G. A. Breaux, Louisville, Ky.; T. R. Hillard, Wilkesbarre, Pa., corn miller; Thomas L. Wolf, vice-president, A. E. Staley Mfg. Co., Decatur, Ill.; L. B. Hangartner, Baltimore Pearl Hominy Co., Baltimore, Md.; A. D. Cummings of A. D. Cummings & Co., Philadelphia, Pa.; F. L. Sullivan; N. C. Brown of Standard Steamship Co. of New York; J. W. Craver, St. Louis, Mo., representing the Aunt Jemima Mills of St. Joseph, Mo., and the Western Corn Millers' Bureau; Thomas L. Moore, Richmond, Va., representing Dunlop Mills and southern millers; R. B. Lancaster, representing Lafayette Corn Flour Mills, Lafayette, Ind.; H. E. Boney; R. C. Herd of the Green Star Steamship Corporation; T. E. Carson, representing Baltimore Steamship Co.; W. H. Stayton, Jr., representing Baltimore Steamship Co.; Charles A. Krause, corn miller; P. F. Tunison, River Plate & Brazil Conference Lines, Shipping Board operators.

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## PORT TO PORT BILL OF LADING

*The Traffic World Washington Bureau*

John S. Willis, for the Foreign Commerce Association of the Pacific Coast, has sent to the Commission and to the Shipping Board copies of a port-to-port bill of lading and the water part of the rail-export bill for their consideration. A port-to-port bill is under consideration by the Shipping Board, with a view to prescribing one for the use of Shipping Board vessels. The water part of the rail-export bill proposed by the association is intended as a substitute for the proposal made by Western Classification carriers. The ocean conditions proposed by the association as a substitute for the conditions proposed by the western carriers by rail are as follows:

II

With respect to the service after delivery at the receiving port of the foreign exporting steamship company and until delivered at destination, it is agreed that:

1. Clause Paramount: This bill of lading is subject to all the terms and provisions of, and all liabilities and exemptions therefrom, contained in the Harter Act of 1893, and any statutory modification of, or amendments to said act.

2. The carrier shall not be liable for loss, damage, delay or default occurring by reason or by means of any fire happening to or on board the vessel, unless such fire is caused by the design or neglect of such carrier, nor for deterioration or damage to goods caused by fumigation or disinfection ordered by sanitary authorities, nor if the carrier shall exercise due diligence to make the vessel in all respects seaworthy and properly manned, equipped and supplied shall it be responsible for damage or loss resulting from faults or errors in navigation or in the management of said vessel, or arising from the dangers of the sea or other navigable waters, acts of God, or public enemies, or the inherent defect, quality or vice of the thing carried, or from insufficiency of packages, or seizure under legal process, or from saving or attempting to save life or property at sea, or from any deviation in rendering such service or for loss resulting from any act or omission of the shipper or owner of the goods, his agent or representative.

3. The carrier shall not be liable for articles of value specified in Section 4281 of the Revised Statutes of the United States, unless written notice of the true character and the value thereof is declared at time of shipment and entered in this bill of lading.

4. The vessel shall have liberty to sail without pilots, to deviate for the purpose of saving life or property, to tow and assist vessels, to go to or stop at any port en route or beyond, in any order, and to deviate with like privilege to stop.

5. Except in cases of negligence on the part of the carrier (the burden of proof as to freedom therefrom to be on said carrier), it shall not be liable for loss, damage or delay occurring to property while in its possession.

6. The shipper shall be liable for any loss or damage to steamer or cargo caused by inflammable, explosive or dangerous goods shipped without full disclosure of their nature, whether such shipper be principal or agent, and if shipped without such disclosure, such goods may be thrown overboard or destroyed at any time without compensation.

7. The carrier shall not be liable for loss of or damage to the goods in an amount exceeding the shippers' invoice value, plus freight and other charges, nor for more than three hundred dollars on any single package, unless the value, if in excess of this amount, is declared at time of shipment, and expressed in this bill of lading and extra freight, as may be agreed upon, paid.

8. The consignee or authorized receiver shall take delivery of goods at destination, paying freight and charges thereon unless prepaid (including such charges, if any, incurred after delivery from ship's tackles, as are payable by consignee under the custom of the port of discharge) and general average, if any.

9. The weight or measurement upon which freight is collected shall be subject to correction and any overcharge proved to exist shall be refunded, and any undercharge paid to the carrier. Freight prepaid and/or advance charges will not be returned, goods lost or not lost. Full freight is payable on damaged or unsound goods but no freight is due on any increase in bulk or weight caused by absorption of water during the voyage.

10. The ship may commence discharging immediately upon arrival and discharge continuously, any custom of the port to the contrary notwithstanding, the collector of the port being hereby authorized to grant a general order for discharge immediately upon arrival, and if the destination be the port of discharge and the goods be not taken by the consignee within the time prescribed by the regulations of the port of discharge, the goods may be by the carrier, at its option, landed or put into craft or stored at the owner's risk and expense, whereupon the goods shall be deemed delivered and the carrier's responsibility ended, but the carrier shall have a lien on such goods until the payment of all costs and charges so incurred.

11. Carrier shall have the liberty to convey goods in craft and/or lighter to and from steamer at the risk of the owner of the goods.

12. The carrier shall have a lien on the goods for all freights and charges and also for all fines and damages which the ship or cargo may incur or suffer by reason of the illegal, incorrect or insufficient marking, numbering or addressing of packages or description of their contents, or shipper's failure to furnish proper consular or custom papers in due time.

13. Merchandise on wharf awaiting shipment or delivery shall be at the owner's risk of loss or damage, not happening through the fault or negligence of the carrier.

14. If the ship shall be prevented by act of God, force majeure, ice,

epidemic, quarantine, blockage, war or other like cause from reaching her destination, or making due delivery, or shall be detained at quarantine, the goods may, at the carrier option, be trans-shipped or discharged into any depot or craft, or landed at the nearest port considered safe by the carrier, and such discharge shall be deemed final delivery under this contract, and all expenses thereby incurred on the goods shall be a lien thereon.

15. Notice of loss and/or damage and/or shortage must be given by consignee to the agent at destination of the carrier making final delivery, within thirty (30) days after such final delivery is taken, provided that notice of any damage and/or shortage not concealed, shall be so given at the time of taking such final delivery. Claim must be made within sixty (60) days after such notice.

16. If the owner of the ship shall have exercised due diligence to make said ship in all respects seaworthy and properly manned, equipped and supplied, it is hereby agreed that in case of danger, damage or disaster, resulting from fault or negligence of the pilot, master of crew, in the navigation or management of the ship,, or from latent or other defects, or unseaworthiness of the ship, whether existing at time of shipment or at beginning of the voyage, but not discoverable by due diligence, the consignees or owners of the cargo shall not be exempted from liability for contribution in general average or for any salvage and/or special charges incurred, but with the ship owner shall contribute in general average, and shall pay such salvage and/or special charges, as if such danger or disaster had not resulted from such fault, negligence, latent or other defect or unseaworthiness.

17. General average shall be payable according to York-Antwerp rules of 1890, and as to any matter not therein provided for, according to the law and usage of the port of New York.

18. If the destination named herein is beyond port (B) the goods specified in this bill of lading shall be delivered to a connecting carrier or carriers at port (B) to be forwarded to such destination subject to all the conditions of the carrier or carriers completing the transit. Upon delivery thereof from the ship's tackle at port (B) the carrier issuing this bill of lading ceases to act as carrier, but is constituted forwarding agent without other responsibility.

19. The shipper shall have the right and option to deliver this bill of lading properly endorsed to the agent of the foreign exporting steamship company at port (A) and upon loading of the goods on board the ship by which the same are to be transported to port (B) to receive in exchange therefor a bill of lading for such goods, in the form of the Washington General Cargo Bill of Lading, 1920, issued by the master or agent of such ship acknowledging their shipment on board and undertaking to transport the same and deliver them to their destination upon the terms set forth in paragraphs 1 to 18 inclusive of this Part II.

And finally, in accepting this bill of lading, the shipper, owner and consignee of the goods, and the holder of the bill of lading agree to be bound by all of its stipulations, exceptions and conditions, whether written or printed, as fully as if they were all signed by such shipper, owner, consignee or holder.

In witness whereof, the agent signing on behalf of the said........ ............................ and ........................................ severally, but not jointly, hath affirmed to............................ bills of lading, all of his tenor and date, one of which bills being accomplished, the others to stand void.

..................................Agent.

Received $......... to apply in prepayment of the charges herein described.

........................................

..................................Agent.

I—We—accept all the conditions of this bill of lading.

........................................

(Shipper or agent for shipper.)

**The port-to-port bill suggested by the association is as follows:**

**Clause Paramount**

This bill of lading is subject to all the terms and provisions of, and all liabilities and exemptions therefrom, contained in the Harter Act of 1893, and any statutory modification of, or amendments to said act.

Ship ..................................
Port of Shipment .....................
Shipper ..............................
Port of discharge .....................
Destination ...........................
Consigned to ..........................At...............
Date of dock receipt ..................

Shipped in apparent good order and condition by the above named shipper at the above named port of shipment on board the steamship above named, the property below described, received on dock for shipment on the date above shown, as the date of dock receipt marked and /or numbered as shown below (contents and condition of contents of packages unknown), to be transported under deck except as noted, to the above named port of discharge and there to be delivered in like apparent good order and condition, unto the above named consignee or assignee, or if the destination above named be beyond the port of discharge, then to be delivered at the port of discharge to connecting carrier or carriers for delivery to the consignee or assigns at such destinations in accordance with the provisions of clause 17 hereof.

| Marks | Pkgs. | Kind of Pkgs. | Description of Articles. | Cu. Ft. | Weight |
|---|---|---|---|---|---|
| ....... | ...... | ............. | ...................... | ....... | ........ |
| ....... | ...... | ............. | ...................... | ....... | ........ |
| ....... | ...... | ............. | ...................... | ....... | ........ |
| ....... | ...... | ............. | ...................... | ....... | ........ |
| ....... | ...... | ............. | ...................... | ....... | ........ |
| ....... | ...... | ............. | ...................... | ....... | ........ |
| ....... | ...... | ............. | ...................... | ....... | ........ |
| ....... | ...... | ............. | ...................... | ....... | ........ |
| ....... | ...... | ............. | ...................... | ....... | ........ |

Total Pkgs.:
Freight charges ..........cu. ft. @ ...... $...... ......
Freight charges ................ @ ...... $...... ......
Freight charges ............lbs. @ ...... $...... ......
Freight charges ................ @ ...... $...... ......
Freight charges ..........bd. ft. @ ....M. $...... ......
Advance charges ....................$...... ......
Total charges .......................$...... ......

Said goods are received and are to be held, carried and delivered by the carrier issuing this bill of lading and each succeeding carrier (if any) upon and subject to the terms and provisions set forth on the reverse side hereof, to all of which the shipper hereby agrees, and every holder hereof shall be bound thereby whether this bill of lading is signed or unsigned by the shipper.

IN WITNESS WHEREOF. ...... bills of lading of this tenor and date have been signed, one of which being accomplished the other(s) to stand void.

Dated in ............ this ........ day of ............ 19.......

Signature of Shipper. For the Master or Agent.

........................ ........................

IT IS MUTUALLY AGREED THAT:

1. The carrier shall not be liable for loss, damage, delay or default occurring by reason or by means of any fire happening to or on board the vessel, unless such fire is caused by the design or neglect of such carrier, nor for the deterioration or damage to goods caused by fumigation or disinfection ordered by sanitary authorities, nor if the carrier shall exercise due diligence to make the vessel in all respects seaworthy and properly manned, equipped and supplied shall it be responsible for damage or loss resulting from faults or errors in navigation or in the management of said vessel, or arising from the dangers of the sea or other navigable waters, acts of God, or public enemies, or the inherent defect, quality or vice of the thing carried, or from insufficiency of packages, or seizure under legal process, or from saving or attempting to save life or property at sea, or from any deviation in rendering such service, or for loss resulting from any act or omission of the shipper or owner of the goods, his agent or representative.

2. The carrier shall not be liable for articles of value specified in Section 4281 of the Revised Statutes of the United States, unless written notice of the true character and value thereof is declared at time of shipment and entered in this bill of lading.

3. The vessel shall have liberty to sail without pilots, to deviate for the purpose of saving life or property, to tow and assist vessels, to go to or stop at any port en route or beyond, in any order, and to deviate with like privilege to stop.

4. Except in case of negligence on the part of the carrier (the burden of proof as to freedom therefrom to be on said carrier), is shall not be liable for loss, damage or delay occurring to property while in its possession.

5. The shipper shall be liable for any loss or damage to steamer or cargo caused by inflammable, explosive or dangerous goods shipped without full disclosure of their nature, whether such shipper be principal or agent, and if shipped without such disclosure, such goods may be thrown overboard or destroyed at any time without compensation.

6. The carrier shall not be liable for loss of or damage to the goods in an amount exceeding the shipper's invoice value, plus freight and other charges, nor for more than Three Hundred Dollars on any single package, unless the value, if in excess of this amount, is declared at time of shipment, and expressed in this bill of lading and extra freight, as may be agreed upon, paid.

7. The consignee or authorized receiver shall take delivery of goods at destination, paying freight and charges thereon unless prepaid (including such charges, if any, incurred after delivery from ship's tackles, as are payable by consignee under the custom of the port of discharge) and general average, if any.

8. The weight or measurement upon which freight is collected shall be subject to correction and any overcharge proved to exist shall be refunded, and any undercharge paid to the carrier. Freight and/or advance charges prepaid will not be returned, goods lost or not lost. Full freight is payable on damaged or unsound goods but no freight is due on any increase in bulk or weight caused by absorption of water during the voyage.

9. The ship may commence discharging immediately upon arrival and discharge continuously, and custom of the port to the contrary notwithstanding, the collector of the port being hereby authorized to grant a general order for discharge immediately upon arrival, and if the destination be the port of discharge and the goods be not taken by the consignee within the time prescribed by the regulations of the port of discharge, the goods may be by the carrier, at its option, landed or put into craft or stored at the owner's risk and expense, whereupon the goods shall be deemed delivered and the carrier's responsibility ended, but the carrier shall have a lien on such goods until the payment of all costs and charges so incurred.

10. Carrier shall have the liberty to convey goods in craft and/or lighter to and from ship at the risk of the owner of the goods.

11. The carrier shall have a lien on the goods for all freights and charges and also for all fines and damages which the ship or cargo may incur or suffer by reason of the illegal, incorrect or insufficient marking, numbering or addressing of packages or description of their contents, or shipper's failure to furnish proper consular or custom papers in due time.

12. Merchandise on wharf awaiting shipment or delivery shall be at owner's risk of loss or damage, not happening through the fault or negligence of the carrier.

13. If the ship shall be prevented by act of God, force majeure, ice, epidemic, quarantine, blockade, war or other like cause from reaching her destination, or making due delivery, or shall be detained at quarantine, the goods may, at the carrier's option, be transshipped or discharged into any depot or craft, or landed at the nearest port considered safe by the carrier, and such discharge shall be deemed final delivery under this contract, and all expenses thereby incurred on the goods shall be a lien thereon.

14. Notice of loss and/or damage and/or shortage must be given by consignee to the agent at destination of the carrier making final delivery, within thirty (30) days after such final delivery is taken, provided that notice of any damage and/or shortage not concealed shall be so given at the time of taking such final delivery. Claim must be made within sixty (60) days after such notice.

15. If the owner of the ship shall have exercised due diligence to make said ship in all respects seaworthy and properly manned, equipped and supplied, it is hereby agreed that in case of danger, damage or disaster, resulting from fault or negligence of the pilot, master or crew, in the navigation or management of the ship, or from latent or other defects, or unseaworthiness of the ship, whether existing at time of shipment or at beginning of the voyage, but not discoverable by due diligence, the consignees or owners of the cargo shall not be exempted from liability for contribution in General Average or for any salvage and/or for any special charges incurred, but with the shipowner shall contribute in General Average, and shall pay such salvage and/or special charges, as if such danger, damage or disaster had not resulted from such fault, negligence, latent or other defect or unseaworthiness.

16. General Average shall be payable according to York-Antwerp rules of 1890, and as to any matter not therein provided for, according to the law and usage of the port of New York.

17. If the destination named herein is beyond the port of discharge, the goods specified in this bill of lading shall be delivered to a connecting carrier or carriers at the port of discharge to be forwarded to such destination, subject to all the conditions of the carrier or carriers completing the transit. Upon delivery thereof from the ship's tackle at the port of discharge, the carrier issuing this bill of lading ceases to act as carrier, but is constituted forwarding agent without other responsibility.

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**LOAN TO C. R. I. & P.**

The Commission, November 9, approved a loan to the Chicago, Rock Island & Pacific Railway Company of $1,425,000 to aid the carrier in making additions and betterments to equipment and $6,437,000 for additions and betterments other than to equipment.

# SHIPPING BOARD OPERATIONS

*The Traffic World Washington Bureau*

Representative Joseph Walsh, chairman of the House select committee on United States Shipping Board operations, made public November 10 the first report of A. M. Fisher and J. F. Richardson, investigators for the committee, on Shipping Board operations. The report covers the subjects of (1) repair yards and practices; (2) ship supply service; (3) allocation of tonnage; (4) managing and operating agreements; (5) shipbuilding contracts and settlements; (6) charters, rates, trade routes, etc.; (7) ship sales program.

Some of the outstanding features of the report, which was taken up for consideration by the Walsh committee in New York this week, are:

That instances of favoritism in allocations and assignments of Shipping Board vessels can be shown where "political influence, or influence through officials of the United States Shipping Board themselves, resulted in the assignment and allocation of tonnage to companies with which the officials were or had been associated.

"Investigation of companies or applicants for assigned or allocated tonnage seems to be more or less haphazard with the United States Shipping Board.

"There seems to be no system, method or rule by which the Division of Assignment and Allocation of the United States Shipping Board assigns or allocates tonnage for management and operation. Indeed, 'influence' seems to govern such assignments and allocations to the exclusion of proper economic consideration.

"Numerous stories are now in the files of the Department of Investigation of the United States Shipping Board showing that foreign agents representing managing and/or operating companies have made no effort whatsoever to secure return cargoes for United States Shipping Board boats even while cargoes seeking transportation were lying in foreign docks, with the result that the profits derived from the transportation of outward-bound cargoes are lost in the cost of operating the ship in ballast back to its home port.

"Dispatch is the successful keynote of successful ship operation. The lack of dispatch which has characterized the operation of United States Shipping Board assigned and allocated tonnage is due to the many reasons set forth in the foregoing.

"The lack of supervision by the Director of Operations of the United States Shipping Board and his organization is such as to leave almost entirely out of the hands of the United States Shipping Board and the operation of its tonnage and the remedies for many of the abuses which underlie the losses in operation.

"Political and other influences were freely used in the early days of the war by persons desiring to secure shipbuilding contracts. Unfortunately, many of these persons were not equipped, either by experience or capital, to build ships or shipbuilding plants, and as a direct result of such influence many persons thus unequipped did secure large contracts, which resulted in heavy losses to the United States Shipping Board Emergency Fleet Corporation.

"Theoretically, United States Shipping Board is showing a profit on earnings even with the handicaps which have hereinbefore been described. An actual accounting, however, of revenues and disbursements, it is believed, will show this theory to be upset."

On the subject of "repair yards and practices," the report sets forth that abolishment of cost plus contracts was ordered by the board in compliance with the statute, but that in spite of this action new agreements were entered into which provide practically all the advantages to the contractor he derived under the old cost plus form of contract, "and give him greater profits, under a more objectionable system, than he got under the old form of cost plus contract."

The investigators say that under the new form of agreement "it is to the advantage of the contractor to pad pay-rolls, slight work, put too many men on the work, encourage loafing on the job, corrupt inspectors and timekeepers, use helpers and charge for first-class workmen; use common labor and charge for skilled labor, drag the work to make it last longer, find additional work to do and get it specified, etc."

The nature of the present agreement, which is condemned in the report, is set forth as follows:

"Each repair company in each port desiring to participate in work of repairing United States Shipping Board Emergency Fleet Corporation ships, files with the local United States Shipping Board Emergency Fleet Corporation agency auditor a list of 'commercial rates,' which is the price, per hour, for each classification of labor each company filing these rates will charge the United States Shipping Board Emergency Fleet Corporation for any work done on its ships. * * * If the board agrees to pay this scale of prices, work is then assigned the various companies on this basis. The theory under this form of agreement is that the commercial rates represent the base rates of pay for direct labor, plus 50 per cent for overhead and profit, plus 10 per cent of material cost to cover cost of purchasing, and profit to contractor. This was exactly what the former cost plus form of contract comprehended.

"Corruption of United States Shipping Board Emergency Fleet Corporation employes became the tendency under this practice. One form of corruption most common is for the contractor to hire and place on his pay-rolls the efficient men who cannot openly be bought, this resulting not only in some employes of the United States Shipping Board Emergency Fleet Corporation being carried on pay-rolls of contractors and drawing pay from them at the same time the employe is drawing salary from the United States Shipping Board Emergency Fleet Corporation, but in other cases it results in employes being taken from the United States Shipping Board Emergency Fleet Corporation and engaged in the service of the contractor."

It is further charged in the report that lack of proper inspection enters largely into the excess cost of repairs to the board's vessels and that many men improperly qualified to check or to keep time are employed. The salaries paid for this work is not commensurate with the work, the report says.

"Delays, demurrage and per diem losses are mounting rapidly and have already been enormous," the report says. "The delays due to lack of co-ordination and co-operation between the operating and/or managing agents and the construction and repair department result in demurrage on cargoes, on railroad cars, congestion, etc. They also result in per diem losses which on the upkeep of ship alone under Shipping Board practice are excessive. Added to this is the loss of the earning capacity. In some cases it has involved a loss of eight times the cost of repairs; in other words, the United States Shipping Board Emergency Fleet Corporation has lost in the ratio of $16,000 to $20,000 to get $2,000 worth of repairs done. Of recent date some of the more important ports may have remedied these conditions to some degree.

The remedy seems to be simple if applied. Some members of the legal department of United States Shipping Board Emergency Fleet Corporation have held that under the present agreements wherein United States Shipping Board agrees to the commercial rates asked by contractors or repair companies, the contractors or repair companies are entitled to the scale thus established for each classification of labor so long as the work passes inspection, without regard to what the base rate of pay for the labor is by the contractor or repair company. Yet the same legal advisers of United States Shipping Board state it would be a simple matter to remedy this condition by a contract which would necessitate the contractor or repair company showing what the base rate of pay for each classification of labor is, and then allow over that a reasonable profit. Also by having each contractor or repair company show what materials cost, and a reasonable profit be added to this. So far as the legal opinions have gone, there is no obstacle in the way of such an equitable arrangement, except the influence of the contractors and repair companies."

Discussing lump-sum contracts for the repair of vessels, the report says heavy losses to the board are incurred under that system.

Referring to "interlocking contracts," the report says that many of the managing and/or operating companies "do have pecuniary interest in and do derive revenues from such subsidiary supply or service companies, and thus in the operation of the United States Shipping Board boats, make contracts with themselves, approve their own bills, and set up a condition under which it is not imperative that the manager and/or operator make an actual profit from the transportation of cargoes, inasmuch as he can, from his monthly agency fees per ship, plus profits accruing from these subsidiary supply or service companies, make excellent revenues, even though the ships in operation show a loss, which must be absorbed by the United States Shipping Board—and this is the case with many of the ships."

The investigators recommend that the evils pointed out be rectified under the new agency agreement, which was in the process of formation when the report was prepared.

"The possible losses under the contemplated new managing and operating agreement, it is said by many, will be so great as to jeopardize the future of the American merchant marine, unless the evils set forth herein are remedied," the report says. "Not only will the tendency for more work and more extensive service be increased but the delays, demurrage and per diem losses also will be proportionately increased."

It is recommended that the interlocking contracts complained of be made in contravention of the penal code.

The investigators say that the purchase of materials for construction and repair work has led to abuses which cause loss to the Shipping Board; that under the existing conditions there is an incentive to a contractor to overpurchase.

As to ships' supply, the investigators say that the service of purchase and supply under managers' and operators' agreements 1, 2, 3 and 4 is left almost entirely in the hands of masters, chief engineers and stewards. They say that the result is, conservatively estimated, an overcharge on the millions

of dollars' worth of supplies purchased and being purchased for United States Shipping Board ships, amounting to 40 or 50 per cent.

"This service of purchase should really be performed by the United States Shipping Board with a properly organized staff of purchasing agents," the report says. "Otherwise proper provision should be made in the managing and operating agreements to require the manager and/or operator to perform the service of purchase and supply under some system which will insure the United States Shipping Board the lowest wholesale prices, a proper quality of goods, proper inspection, inventory and rationing. This phase of operation, one of the big sources of expense, is, under the present practice, nobody's concern and everybody's business, so to speak."

Under the heading "allocations" the report states that the allegation has been made, in times past, that favoritism has been made by the United States Shipping Board in the allocation or assignment of its tonnage for operation or management.

"Instances of such favoritism can be shown where political influence or influence through officials of the United States Shipping Board themselves resulted in the assignment and allocation of tonnage to companies with which the officials were or had been associated," says the report. "While some companies which did not have the standing or the financial responsibility to insure safe and proper management and operation of United States Shipping Board boats were able to get from the United States Shipping Board all the tonnage they applied for, other companies, with a long history of successful ship operation, and with financial responsibility beyond question, were unable to secure the tonnage for which they applied. The only excuse these latter companies were able to secure from the United States Shipping Board was in most cases, 'the boats you seek are already allocated.' Controlling as it does the trade routes and character of boats, the United States Shipping Board is able to restrict applicants for allocated tonnage and managers and operators of United States Shipping Board tonnage to conditions which make or ruin the success of the manager and/or operator of United States Shipping Board boats. It has been charged on more than one occasion that, while 'shoestring companies' with insufficient financial backing, and insufficient experience in management, are able to get all the tonnage they request, which tonnage they, in many cases, are operating at a loss, reputable, experienced operators do not get tonnage allocated to them, or, if they do secure tonnage, it is, in many cases, ships of an undesirable type, and they are restricted to trade routes which are unprofitable, being given no ships in the trades which are sufficiently profitable to carry the burden of loss on operation of undesirable types of boats, or boats in undesirable trades.

"Earnings or losses; interlocking ownerships in ship chandlery, repair, water, towing, stevedoring, forwarding companies, and taking of additional percentages, creating losses which United States Shipping Board has to absorb, all enter into the question of desirable or undesirable management or operation. The condition brought about by the managers' and operators' agreements, under which United States Shipping Board absorbs all losses, but shares with the manager and/or operator any net profits, is such as to give rise to interlocking ownerships and contracts, as hereinbefore shown under the subjects in which this evil has been treated in detail. The net results, however, are bad primarily because such a condition tends to tempt the manager and/or operator who has insufficient capital and experience to get into the ship supply or service business and take his profits therefrom, knowing that the actual operation of the ships will show a loss about which he has no worry, inasmuch as these losses are absorbed by United States Shipping Board. This very condition places the legitimate operator who depends solely upon the profits derived from the actual carrying of cargoes in competition with practices which are bound to result in losses for United States Shipping Board; thus the legitimate operator is forced to adopt similar methods of interlocking ownerships and contracts, or else he is doomed to financial failure in the operation of United States Shipping Board tonnage.

"Bases of allocations theoretically are correct, in that the United States Shipping Board, through its division of assignments and allocations, is supposed to determine the financial responsibility as well as the experience of the applicant for assigned or allocated tonnage. Unfortunately, however, owing to the lack of a credit bureau, the United States Shipping Board does not determine in many cases these two important points with regard to applicants for tonnage. The nearest approach the United States Shipping Board had to a credit bureau was the department of investigation, which, for some reason never made public, was suddenly overturned and so disturbed that it practically ceased to function. Unfortunately, due to laxity in determining the two all-important points with reference to the fitness of applicants to manage or operate United States Shipping Board tonnage, some companies which have not shown profits in the management and operation of United States Shipping Board tonnage have been able to secure the best type of boats and to operate in the most profitable trade routes, and yet show losses on the operation. Naturally, the burden of inefficient operation by inexperienced agents has to be passed on to the experienced operators to bear, being reflected as hereinbefore mentioned, in various ways, among which is the high percentage of gross earnings reserved by the United States Shipping Board to cover cost of upkeep, depreciation and repair.

"Investigation of companies or applicants for assigned or allocated tonnage seems to be more or less haphazard with United States Shipping Board. During the time the Department of Investigation was intact, and its personnel embraced men who knew the history of the United States Shipping Board and of applicants for tonnage, attempts were made by the Division of Assignment and Allocation to co-operate with the Department of Investigation. Just about the time proper co-operation between these two departments was established, however, the Department of Investigation was so disturbed by a change in its directing heads and its personnel as to render its offices useless for the purposes of the Division of Assignment and Allocation. Ordinarily, aside from the work of the Department of Investigation, the method of ascertaining the financial responsibility of applicants for tonnage is to seek reports by the commercial reporting companies such as Dun or Bradstreet. This avenue of information became useless in the case of newly organized companies, many of which sprung up, and neither did this avenue of information assist the Division of Assignment and Allocation in determining the experience of the applicant for tonnage. Neither has the Division of Assignment and Allocation any organization or method for determining what managers and/or operators are indulging in interlocking ownerships or contracts, and it is said the Division of Assignment and Allocation does not secure information already in the files of the Department of Investigation relative to this subject.

"Remedy.—The remedy for these conditions, obviously, lies in a properly organized credit department, together with a properly functioning Department of Investigation.

"Earnings.—The earnings derived from the operation of assigned and allocated tonnage ordinarily should be far above the expenses. Theoretically, United States Shipping Board is showing a profit on earnings even with the handicaps which have hereinbefore been described. An actual accounting, however, of revenues and disbursements, it is believed, will show this theory to be upset. Whereas one manager and/or operator may show a profit on the earnings of tonnage operated by him, and whereas one operator may derive a good profit from his division of net profits with United States Shipping Board on such tonnage, the net result to United States Shipping Board can not be considered as in that light, because United States Shipping Board is operating many hundreds of thousands of tons, through many agents, and the profits shown by one manager and/or operator may be, and in fact are, swallowed up in the losses brought about through improper financial organization, lack of managing and operating experience, or abuse of the agreement through interlocking ownerships and contracts, by some other agent. The results, then, can only be known when the final accounting takes place with all managers and/or operators of United States Shipping Board tonnage, and there are many who believe this final accounting will show serious losses on the gross tonnage operated.

"Trade routes.—Owing to the inflexibility of the managing and operating agreements, no operator was allowed to exercise any initiative in the selection of trade routes. The other extreme, however, was reached under managing and operating agreement No. 3. The result of old practice was that operators with sufficient experience to enable them to operate United States Shipping Board boats at a profit, provided some of the boats allocated them are permitted to operate in profitable trade routes, while other boats are operated in unprofitable trade routes, to open up to American commerce such trade routes, many of these operators, finding themselves restricted wholly to unprofitable trade routes, are unable to make any money. At the same time other managing and/or operating agents who have the most profitable trade routes and the best type of boat allocated them are through lack of operating experience unable to show a profit. Obviously there is no encouragement for the experienced operator to operate United States Shipping Board boats when he finds himself restricted wholly to the unprofitable trade routes, and it is equally obvious that there is no advantage to United States Shipping Board in operating ships over the profitable trade routes if inexperienced and improper operation nullifies profits which otherwise would accrue.

"When the other extreme was reached under managing and operating agreement No. 3, under which the manager and/or operator was given too great liberty in the determination of what trades the tonnage operated by him should ply, the result was that the operators immediately flooded the profitable routes with tonnage, and rates went down, while routes which it is desired to develop, and which, necessarily, would be unprofitable during the early stages of their development, were neglected. So that the United States Shipping Board finds itself in as bad a position under managing and operating agreement No. 3, with regard to trade routes, as it did in the opposite

direction under managing and operating agreements Nos. 1 and 2, through the inflexibility of the contract with regard to the trade routes.

"Trade rates.—Managers and/or operators complain now that trade rates on cargoes have been reduced to such a point that it is almost impossible for any of the United States Shipping Board boats to show profits. Indeed, many operators assert that the United States Shipping Board could more profitably tie its boats up and cease operation entirely than to continue operating under the present trade rates. If the United States Shipping Board is to continue the operation of an American merchant marine in competition with foreign cuts in rates, then obviously, it can do so only by the exercise of the strictest business methods, the reduction of operating expenses to the minimum, the stoppage of all leaks and sources of unnecessary expense, and by building up an organization, and by maintaining such close relations with its managing and/or operating agents as to insure the most rapid "turn-around," thereby reducing losses in operation to the minimum. As has hereinbefore been set forth, the United States Shipping Board has not the organization to accomplish this, it does not maintain sufficiently close relations with its managing and/or operating agents to insure such results, and there are many who say that if present conditions and practices in the United States Shipping Board continue, it is a question of time only when the American merchant marine will prove such an expensive failure as to make it impracticable to continue it.

"Tonnage, Amount of, for Each Company.—There seems to be no system, method, or rule by which the Division of Assignment and Allocation of the United States Shipping Board assigns or allocates tonnage for management and operation. Indeed, 'influence' seems to govern such assignments and allocations to the exclusion of proper economic consideration. Possibly some progress toward remedying this condition is being made. Many companies which are thoroughly equipped financially and by experience to manage and operate United States Shipping Board tonnage profitably, find themselves unable to secure tonnage for management and/or operation, even though they represent to the United States Shipping Board that they have cargoes awaiting transportation. Meanwhile, other companies are able to secure assignment and allocation of tonnage through the United States Shipping Board when such companies are not financially able to operate the amount of tonnage assigned or allocated to them, some of these companies having a record for continuous losses on management and/or operation of United States Shipping Board boats which certainly would seem to be sufficient for the withdrawal of such tonnage from their management and/or operation. Many of the more recently organized managing and/or operating companies have not an organization sufficiently extensive to properly handle the boats allocated to them in foreign ports, yet they are allocated more and more tonnage, while well-organized companies are unable to secure tonnage. Many responsible operators declare that the treatment accorded them by the United States Shipping Board is not of the prompt nature employed in common, everyday business. The difficulties surrounding the withdrawal of tonnage from managers and/or operators who show losses seem to be such that withdrawals of tonnage are rare. While it is true that the general operating situation is seriously disturbed by constant withdrawals from one operator and reallocation to some other operator of tonnage, there seems to be no definite system by which this is accomplished, with the result that instead of making for a betterment of operating conditions, these withdrawals in many cases aggravate unprofitable conditions. The reasons for withdrawal of tonnage, it seems, are seldom assigned by the Division of Assignment and Allocation, and charges of favoritism by operators are numerous. It is asserted by some operators that even though they were operating profitable types of boats in profitable trade routes, at a substantial profit to the United States Shipping Board, these boats were withdrawn from their management and/or operation and reallocated to companies of less financial responsibility, less operating experience, and, in some cases, to trade routes where there was no hope of the ships showing any net profit on operation.

"Organization, Necessity for.—Under the present practice by the United States Shipping Board of assigning the same boat to one company for management and allocating it to some other company for operation, there arises in many instances a duplication of organization which in turn imposes an unnecessary burden of expense on the operation of the boat. Cases have arisen, for instance, where the manager of a boat entering into a charter party with some shipper, under which charter party the charterer reserved the right to nominate his agents at various ports, the manager of the boat has instructed his agents to perform the necessary port offices for the boat, at the same time the charterer has nominated his agents to perform the proper port offices for the boat, and both representatives have been paid for the work of looking after the boat in port. It is, of course, necessary that the United States Shipping Board take cognizance of such conditions and remedy them by a proper organization. The necessity for proper organization by the managing or operating company, particularly with regard to the selection of its foreign agents, is highly important. Numerous stories are now in the files of the Department of Investigation of the United States Shipping Board showing that foreign agents representing managing and/or operating companies have made no effort whatsoever to secure return cargoes for United States Shipping Board boats even while cargoes seeking transportation were lying in foreign docks, with the result that the profits derived from transportation of outward-bound cargoes are lost in the cost of operating the ship in ballast back to its home port. Indeed, in some cases, supercargoes have, on their own initiative, and in spite of difficulties with foreign agents of managing and/or operating companies, secured cargoes for returning United States Shipping Board ships, and yet the Division of Assignment and Allocation seems to have paid little attention to these occurrences. It is obvious that a newly organized managing and/or operating company, without foreign agents whom it can trust, is not in position to operate United States Shipping Board boats as successfully as old-established operating companies which do have foreign agents whom the companies can trust. A great many of the managing and/or operating now managing and operating United States Shipping Board boats have no boats of their own, and exist purely by the operation of United States Shipping Board tonnage. Where such companies indulge in interlocking ownerships and contracts, the expense of an organization is regarded by them as being a useless one, and the result is that the entire operation of all United States Shipping Board tonnage is rendered less profitable by the highly unprofitable operation of such tonnage as is assigned or allocated to such companies.

"Trade Rivalry.—Trade rivalry, while commendable, may be, and has been, carried to a point where it reacts unfavorably upon the United States Shipping Board. Many instances can be shown where at a port one operator of United States Shipping Board tonnage, holding contracts for transportation of numerous cargoes, and having but one ship available, would hold up the other cargoes, while at the same port other United States Shipping Board boats, operated by the other companies, were accumulating per diem losses awaiting cargoes. Certainly it would seem that the establishment by United States Shipping Board of proper reciprocal relations between its managers and/or operators would eliminate these losses. It is obvious, of course, that although one operator operating United States Shipping Board tonnage, is securing several cargoes more than he is able to accommodate, is, from his own standpoint, doing good business, the net loss to the United States Shipping Board is so serious, where other operators have to hold up ships awaiting cargoes at the same port, as to completely nullify the profits to the United States Shipping Board derived through the enterprising company, and to render the whole operation unprofitable.

"Securing of Cargoes, Foreign Agencies, Etc.—The securing of return cargoes at foreign ports has become such a serious question as to vitally affect the entire operation of United States Shipping Board boats. There has been a marked laxity on the part of foreign agents in securing return cargoes, and, as hereinbefore stated, the files of the Department of Investigation will disclose cases where supercargoes have encountered serious difficulties with foreign agents of managing and/or operating companies because such supercargoes went out and secured return cargoes when the foreign agent stated there were no cargoes procurable for the return voyage. It is obvious, of course, that ship operation will not be profitable if the business of carrying cargoes holds good only on one leg of the voyage. This shows the necessity for a high state of organization, supervised by United States Shipping Board, of foreign agencies through which managing and/or operating companies operate United States Shipping Board tonnage. Under the present practice the organization of foreign agencies is left solely in the hands of managing and/or operating companies, with the result that, in the case of managing and/or operating companies which have an insufficient or no organization of foreign agencies, and in the case of managers and/or operators who operate their own ships as well as United States Shipping Board tonnage, United States Shipping Board must necessarily face losses, because in the case of the first company, its organization is not such as to guarantee return trip cargoes, while in the case of the second class of companies preference naturally will be given to their own boats, inasmuch as the managing and/or operating company must itself absorb any losses accruing from the operation of these privately owned ships, whereas under the managing and operating agreements any losses on United States Shipping Board operation are absorbed by United States Shipping Board.

"Dispatch, Lack of, Reasons for, Etc.—Dispatch is the keynote of successful ship operation. The lack of dispatch which has characterized the operation of United States Shipping Board assigned and allocated tonnage is due to the many reasons set forth in the foregoing. In some cases, as at Norfolk recently, it was due to lack of bunker supplies. In other cases it is due to lack of dry-docking facilities. In still other cases it is due to improper ship supply through lack of a proper organization in United States Shipping Board. Again, it is due to interlocking contracts and ownerships which lead managers and/or operators to hold up boats for unnecessary repairs, in order to reap

the additional revenue from these sources. In still other instances it is due to lack of sufficient operating capital. In other cases it is due to improper accounting methods. In still other cases it is due to inexperience on the part of the managing and/or operating company. Again, it is due to the preference given by some managing and/or operating companies to their own ships in discrimination against tonnage operated by them for United States Shipping Board. In many instances it is due to improper organization of foreign agencies. Whatever the reason in any specific instance may be for the lack of dispatch, the loss to the United States Shipping Board is just as great and just as serious as though the same reason were responsible for all delay in dispatch. One of the potent reasons, it is said, was the rigidity of the managing and operating agreements, which restricted solely to the United States Shipping Board the right to transfer a United States Shipping Board boat from one trade to another, and the lack of dispatch in the central organization at Washington in providing for such change of trade route upon request of the managing and/or operating company. It is a common complaint of managers and/or operators that they are unable to get a businesslike promptness in the disposition of their requests governing the operation of United States Shipping Board tonnage from the central organization. Taken in its entirety, lack of dispatch due to any of the reasons assigned in the foregoing enters very largely into the success or failure of the American merchant marine. In fact, it is one of three governing factors, the other two being experience on the part of the managing and/or operating company in the operation of vessels, and the reduction to minimum of the cost of upkeep and operation. It may be noted here that the current repairs to vessels which, in foreign practice, and under private ownership, are performed by members of the crew during the voyage and while the ships are in port, are, on United States Shipping Board boats, performed in port by dry-docking and repair companies. This is true, it is said, of 90 per cent of the normal repairs done by foreign crews. A common complaint of managers and/or operators is that under the present conditions the crews go ashore the moment their ship touches dock and do not do anything with regard to the loading or repair of the ship during her stay in port. Managers and/or operators also complain that they are unable to get the crews to do anything other than merely navigate the ship while at sea.

"Remedy.—The remedy, of course, lies first in proper organization, supervised by United States Shipping Board; second, in the establishment of reciprocal relations between the various managing and/or operating agents of United States Shipping Board to insure the rapid "turn-around" of all boats; third, the proper steps to secure cargoes through foreign agencies for the homeward-bound leg of the voyage; fourth, the elimination of all reasons for lack of dispatch.

"By Director of Operations, Lack of.—The lack of supervision by the Director of Operations of United States Shipping Board and his organization is such as to leave almost entirely out of the hands of United States Shipping Board the operation of its tonnage and the remedies for many of the abuses which underlie the losses in operation. Theoretically, the Director of Operations is the repository for all complaints and all information relating to the operation of United States Shipping Board tonnage. Actually, the Division of Operations is so far removed from real field conditions by lack of information from its field agents as to make it impossible for the Director of Operations to properly function. The managing and operating agreements leave so largely in the hands of the agents the execution of the duties which theoretically the Division of Operations is to perform, as to render the Division of Operations impotent. It has developed that in many cases of masters and stewards placed on deferred lists, i. e., removed from active service for cause, these same masters or stewards have been found aboard other United States Shipping Board ships in the employ of other managers and/or operators, and came to notice only when they committed some new act of carelessness or dishonesty. The Division of Operations is unable, by reason of the managing and operating agreements, to deal directly with contractors and with ship supply agencies. It is unable, apparently, to remedy abuses which have been detailed in the foregoing. To such degree as Division of Operations proper functioning is limited, is the loss in overhead expense in maintaining a Division of Operation to United States Shipping Board. If the Division of Operations is to function properly, according to the theory upon which its existence is based, it must be composed of men who have ship operating experience, and a wide and varied business experience in addition thereto. Such does not seem to be the case with the Division of Operations at the present time.

"By Port Agents, Lack of.—The same obstacles in the way of a proper supervision by the Division of Operations, central office, lie also in the way of supervision of operation of United States Shipping Board tonnage by the port representatives of the Division of Operations. Under managing and operating agreements 1, 2, and 3, not only were repairs beyond the jurisdiction of port representatives of the Division of Operations, and solely in the hands of the port representatives of the construction and repair department, but under the new prospective practice provided for in the United States Shipping Board contract with Frank S. Martin of New York, repairs to United States Shipping Board vessels will be placed still further beyond the control of either the central office or the port representatives of the Division of Operations. Also, under the managing and operating agreements 1, 2, and 3, the purchase, delivery, inspection, and inventory of ships' supplies were entirely beyond the jurisdiction of the central office and the port representatives of the Division of Operations, and under the contemplated managing and operating agreement No. 4 they will continue to be so. The result is that the functions of the port representatives of the Division of Operations are not well defined, and the authority of these port agents is not so well established as to be of any real worth to the United States Shipping Board. Cases have come to light where port agents have been found to be completely out of touch with the district auditing department, the timekeeping and inspection department, the construction and repair department, the insurance department, to say nothing of not being in close touch with managers and/or operators with regard to the supply and service needed by ships. This lack of supervision makes for the conditions as hereinbefore described under the various subjects, and until the status of the port agent or representative of the Division of Operations is more clearly defined, and until the port agent is given greater authority, little if any headway will be made toward rectifying the evils which have hereinbefore been set forth.

"Not only is the compensation as now paid by the United States Shipping Board to its port agents insufficient to attract men of ability, but the conditions are such that even when men of ability are secured for these port positions, they seldom remain long with the United States Shipping Board before they are taken at higher salaries by managing and/or operating companies, so that the United States Shipping Board is left in position of being the preparatory school or clearing house for officials, the best of whom gravitate to the managing and/or operating companies, and the least competent of whom naturally remain in the service of the United States Shipping Board. This is not to say that all port representatives of the Division of Operations are either incompetent or dishonest, but it is to say that under the present organization there is little if any encouragement for the port representative of the Division of Operations to exercise his initiative in trying to remedy conditions; and merit is seldom recognized, because it takes the central office of the Division of Operations too long to recognize meritorious work on the part of any individual port representative, with the result that the good men become discouraged and quit the service. It is equally true that it takes the central office of Division of Operations too long to learn that individual port representatives are incompetent, with the result that losses, due to the incompetence of these port representatives, may mount to hundreds of thousands of dollars before it is discovered in Washington that they are not competent.

"By Foreign Agents, Lack of.—The lack of supervision of operation by foreign agents, particularly with regard to promptly securing cargoes for the return voyage of the boats, is one of the crying evils of the present practice. Care should be exercised by the United States Shipping Board that its managers and/or operators have foreign agents whose motives would be to help make the American merchant marine a success. Also, the foreign representatives of the Division of Operations should have closer supervision of the foreign agents of the managing and/or operating companies, in order to remedy what has become a common evil, namely, the laxity on the part of foreign agents in securing return cargoes. The same condition obtains with regard to the service and supply of United States Shipping Board vessels abroad. It is common knowledge in seagoing circles that United States Shipping Board ships are grossly overcharged by foreign service and supply men, not only from the standpoint of common dishonesty, but from the further standpoint of a desire on the part of these foreign service and supply men to see the American merchant marine fail. It is commonly known that American timekeepers, inspectors, or clerks can not be used in checking up service and supply by foreign companies to United States Shipping Board ships, United States Shipping Board officials testifying in many cases that to attempt to use American checkers, timekeepers, purchasing agents, etc., would result in foreign supply and service men refusing to serve United States Shipping Board ships.

"Relation of United States Shipping Board to Contractors and Agents Under Agreements.—The relation of United States Shipping Board to contractors under the managing and operating agreements 1, 2, and 3, is an indirect relation, in so far as the necessity for repairs to the ships is decided by the managing and/or operating agent, the survey and specifications are drawn up by the insurance and construction and repair departments of United States Shipping Board, the work is inspected and time is kept by the auditing department of United States Shipping Board, and the work finally approved by both these departments, and the bills paid out of the revenues held in trust by the managing and/or operating agents for account of United States Shipping Board. Under the Martin contract this will be done away with and the necessity for repairs, the surveying and drawing of specifications, the assignment of the work, the inspection

and approval of the work, the approval of the bills for payment, will all be decided upon and performed by the Martin organization, which is not a part of the United States Shipping Board, and the bills will be paid for account of United States Shipping Board by the managing and/or operating agents. There has been little if any attempt on the part of United States Shipping Board to confer with contractors who serve or supply United States Shipping Board ships from the standpoint of these service and supply men being primarily part owners of the American merchant marine, secondarily in being interested in seeing the American merchant marine prosper in order that they may continue to serve or supply ships; the relation between managing and/or operating agents and the contractors who serve or supply ships has not been a close one in many instances, because of the fact that responsibility for the service or supply of these ships is so divided between managing and/or operating agents and the various departments of United States Shipping Board as to make neither the agent nor the departments of United States Shipping Board wholly responsible for the results obtained. Until this is remedied, serious losses are bound to continue.

"Remedy.—The remedy for the conditions as set forth under the subject of 'Supervision,' obviously, is to so amend the managing and/or operating agreements as to give to the Director of Operations a closer and more direct control of the operation of United States Shipping Board boats, and to reflect this control through the port representative of the Division of Operations. The personnel of the Division of Operations obviously would have to embrace men of ship-operating and other business experience sufficient to qualify them to handle a business of such magnitude as the operation of United States Shipping Board ships comprises. Greater compensation and a closer cooperation between port representatives and the central office of Division of Operations are also necessary. Responsibility for results in ship service and supply will have to be more clearly defined and placed upon either the managing and/or operating agents or the departments of the United States Shipping Board."

The investigators allege that there has been serious lack of co-operation and co-ordination among the departments of the Shipping Board. They say there has been little if any co-operation between the investigation and legal departments and that the comptroller's department finds it difficult to co-operate with the department of investigation and the legal department. They say further that the supply and sales department has also failed to properly co-operate with the comptroller in many instances, and that the same is true of the claims board and of the construction and repair department, and the insurance department.

Regarding ship building contracts and settlements the report says so much has been written and spoken against the notorious cost-plus contract that little can be added here, except to cite various instances showing those evils with relation to the operations of the Shipping Board and its emergency fleet corporation. The report discusses these evils at length.

"Not only were political and other influences used in securing contracts, modifications or extensions thereof," the report says, "but in the settlement of claims it is said in several instances that the contractor was seeking a settlement of his claims, not on their merit, but through these influences."

Discussing charters, rates, trade routes, and so forth, and the ships sales program, the report concludes as follows:

"1. **Charters.**

"(a) Bare-Boat Charters.—In opposition to the present methods of the United States Shipping Board in assigning and in allocating for managing and operation so much tonnage, there are those who argue that the bare-boat charter basis is the only proper foundation upon which the United States Shipping Board can hope to successfully operate it as government owned and operated tonnage. It is argued further by the proponents of the bare-boat charter that the heavy upkeep and repair expense is thus eliminated by the United States Shipping Board; that the operator is placed in position of exercising the same care that any private operator exercises over the operation of his tonnage; with the result that interlocking ownerships and contracts, and agency fees, which are sought by some operators who have no intention, apparently, of either owning or operating tonnage for revenues from cargo carrying, would be stopped; and at the same time would demonstrate to the United States Shipping Board those operators who possess the experience, or energy to acquire sufficient experience, to become successful operators in a privately owned American merchant marine. Under the bare-boat basis of charter much of the United States Shipping Board's overhead would be avoided, and many of the evils hereinbefore set forth would be eliminated.

"(b) Time Charter.—The time charter is so closely allied to the present method of allocation as to offer but little advantage over the present practice of the United States Shipping Board.

"(c) Charter and Purchase Plan.—The United States Shipping Board for a time adopted a method of selling its tonnage on a charter and purchase plan, which called for a 2½ per cent payment of the purchase price of the boat down, and certain charter conditions to protect the United States Shipping Board. This did not prove successful.

"2. **Rates.**

"(a) Competition.—The question of rates, of course, is a fundamental one in the success or failure of the American merchant marine. Naturally, foreign competitors took advantage of the situation by cutting rates. The United States Shipping Board thus faced the alternative of also reducing its rates, in a rate war which would have cost millions, or in withdrawing its tonnage and creating a shortage of tonnage, automatically increasing rates through the law of supply and demand. The latter course was adopted after rates had suffered a 50 per cent decrease. Upon the withdrawal of its tonnage, which, of course, was a source of serious loss to the United States Shipping Board in rendering inactive its ships, the rates slowly rose to a somewhat higher level, and by the cautious introduction of its tonnage back into operation, the United States Shipping Board was enabled, to some extent, to re-enter the field without further seriously disturbing the rates, which now seem to be temporarily stabilized at their present level. Apparently the foreign competitor, by means of keeping in touch with the amount of tonnage the United States Shipping Board was putting into operation, was able to cut rates 25 to 50 cents a ton and avail himself not only of the greater amount of tonnage, but also to take advantage of the slowly increasing rates. The lack of scientific business practice in the United States Shipping Board, plus the inertia of the United States Shipping Board organization, made it impossible for these conditions to be met as promptly under United States Shipping Board practices as they could and would have been met under private practice. The net result of this condition was that the United States Shipping Board not only suffered the losses incident to tying up its tonnage for a time, but it failed to reap any marked benefits upon the reintroduction of its tonnage into operation, because it did not meet the strategy of the foreign competitor. It is asserted by many that the United States Shipping Board is in great need of a competent traffic bureau.

"(b) Supply and Demand of Tonnage.—Rates can be manipulated by taking advantage of the supply of and demand for tonnage, and it is seriously to be questioned whether or not this offers the ultimate solution of the problem, so long as the foreign competitor stays a few cents under the rate and gets a large portion of the tonnage. There are many who assert that it would have been better for the United States Shipping Board to have met squarely a rate war and to have paid the losses incident thereto all at once, rather than to have deferred such losses from day to day and to have paid them in installments by tying up its ships. Others assert this was not the proper plan, but that some of the tonnage should have been retired temporarily and other tonnage allowed to operate at the prevailing rates. Others assert that the coastwise trade should have been developed with United States Shipping Board tonnage to make up for deficiencies in the transoceanic trade. Whichever solution may be the proper one, it seems to be established that the United States Shipping Board has not met the condition.

"(c) Rate Bureau.—United States Shipping Board maintains a bureau which is supposed to function as a traffic bureau, but apparently does not do so.

"3. **Trade Routes.**

"(a) Development of Trade Routes.—Under old practice in United States Shipping Board, development of trade routes was sought by the arbitrary assignment to certain operators of tonnage which was to be used only in certain trade. Certain routes were laid out to be developed, and there was no departure from the rule that the tonnage allocated to this trade must continue in that trade. This resulted, in many instances, in operators being unable to make any profit because they had tonnage allocated entirely to trade routes which, being in early stages of development, were naturally unprofitable. No provision was made to divide the burden of developing such trade routes among several operators, allowing them also to participate in profitable trades, in order to balance by profits on profitable routes the losses due to development of unprofitable routes. It was this condition which resulted in the drastic change under managing and operating agreement No. 3, which as hereinbefore noted, caused United States Shipping Board to swing to the other extreme and allow managers and/or operators too much discretion in the selection of trade routes for the tonnage they operated. Lack of balance as to net earnings of the several routes is one of the serious handicaps to the proper development of the American merchant marine under present practice.

"(b) Coastwise Routes.—For some reason but a small percentage of United States Shipping Board tonnage has been allocated to coastwise trade.

### Ship Sales Program

1. **Merchant Marine Act.**

"(a) Provisions of.—The merchant marine act is generally accepted to provide that United States Shipping Board tonnage shall be sold to such purchasers as can and will agree to keep the boats in operation under American registry. Failing in this, the United States Shipping Board may charter this tonnage; failing in this, the United States Shipping Board may then allocate the tonnage for operation under United States Shipping Board supervision.

"(b) Sale of Tonnage.—It is admitted by United States Shipping Board officials that the sale of United States Shipping Board tonnage is almost impossible of consummation under present practice. Not only are charges of discrimination made against United States Shipping Board regarding the sale of tonnage, but it is further asserted practices of the United States Shipping Board discourage the purchase of its tonnage by operators. Another reason advanced for this is that purchasers of United States Shipping Board tonnage can not, under present freight rates, make the necessary 5 per cent to meet payments and at the same time carry the income tax. Another argument advanced is that the United States Shipping Board does not allocate for operation any tonnage to purchasers of other tonnage from the United States Shipping Board, in order to nurture such operating companies until they can finally own all of the tonnage. Another allegation is that the United States Shipping Board brings the purchaser of tonnage into competition with managers and/or operators of tonnage assigned or allocated under conditions which are disadvantageous to the owner of tonnage purchased from United States Shipping Board. Although the merchant marine act stipulates that the responsibility of purchasers of United States Shipping Board tonnage shall be thoroughly ascertained by the United States Shipping Board, the United States Shipping Board has an imperfect organization for so determining the responsibility of companies, and the result has been that many boats purchased from the United States Shipping Board have been turned back. Cases have arisen where purchasers of United States Shipping Board tonnage have allowed the boats to be libeled in foreign ports, thereby forcing the United States Shipping Board to protect its interests by protecting ships against libel.

"Apparently, no safeguard is provided by United States Shipping Board to prevent purchasers of boats who paid 2½ per down coming before the board and pleading the general conditions, such as low freight rates, excess repair and upkeep costs, income tax, and other conditions, in securing a deferment of second payments, then taking off earnings from profitable trade as rapidly as possible, and after having become assured of a profit, permit the boat to be libeled and thus force United States Shipping Board to accept a redelivery of the ship. In some cases, changes have been permitted in the boats which resulted in reducing the efficiency of the boat, and United States Shipping Board not only has accepted a redelivery of the boat from its purchaser, but has paid the cost of these changes which rendered the boat undesirable. United States Shipping Board apparently has not properly safeguarded itself against deliberate falsification of credit information submitted it regarding proposed purchasers of tonage. Some sales of tonnage disadvantageous to United States Shipping Board have been negotiated by the Claims Board in the course of settlements of shipbuilding contracts. Through a reduction of the original purchase price of tonnage, United States Shipping Board has placed itself in position of having to meet arguments of early purchasers of tonnage that they are being penalized for having bought tonnage at the price first established by United States Shipping Board under its sales program. These early purchasers argued that trade rates were higher at the time they purchased the tonnage, and that even at the advanced price, they could see a substantial profit. They argue now that freight rates have been reduced and because United States Shipping Board is operating tonnage through managing and operating agents they are unable to realize on their investment. One of the terms surrounding the early sales of United States Shipping Board tonnage was an initial payment of 25 per cent of the purchase price, and later United States Shipping Board reduced this to 10 per cent and provided for a longer period of deferred payments. Early purchasers of tonnage now argue that they should be given consideration in the form of a reduction of the tonnage price and an extension of their term of payment therefor. Apparently, United States Shipping Board continues to allocate tonnage because conditions are such that it does not find ready sale for its tonnage, rather than seeking to remove the obstacles to the sale of its tonnage."

The report was made by A. M. Fisher, an accountant, statistician and efficiency engineer who suggested the "sailing day" arrangement for less-than-carload freight used by the Railroad Administration, and who tried to induce those in charge of that matter to adopt a plan for handling freight on the piers of the railroads in New York, which would avoid congestion of trucks on them, and J. F. Richardson, a former newspaper man, who was formerly employed by the board. The latter wrote the synopsis of what the two claim can be shown to the committee from the records of the Shipping Board itself. They claim to have procured all the facts upon which they based their charges from the employes and officials of the Board, and its records, their desire being not merely to tear down, but to make suggestions that would result in building up. They said they had to avoid giving offense to the officials of the Board, and assist them in every way possible and, if possible, to secure their wholehearted co-operation.

### Benson Will Co-operate

Complete co-operation with the Walsh House committee in the investigation of the Shipping Board was promised by Admiral Benson, chairman of the board. The admiral would not comment on the charges in the report of investigators Fisher and Richardson, which was presented to the committee.

"The only thing I want to say," Admiral Benson said, "is that the board is ready to lend every possible assistance, either by furnishing documents, data, etc., within the board's control or by having its employes appear before the committee to give testimony.

"The chairman does not wish to make any statement otherwise, because he feels this investigation is directed by Congress and that he is not privileged to make any statements in regard to it."

## PIEZ REPLIES TO CHARGES

Charles Piez, of Chicago, who during the war was director-general of the Emergency Fleet Corporation, replied to the statement given out in Washington charging graft and incompetence against the United States Shipping Board.

"Twice within eight months," Mr. Piez said, "the so-called Walsh committee has caused the publication of statements reflecting on the competency, honesty and integrity of the United States Shipping Board and the Emergency Fleet Corporation.

"The first statement was heralded as indicating a billion-dollar graft among the shipbuilders and Emergency Fleet Corporation officials of the Pacific coast.

"The indictments, when brought, totaled less than $30,000, and when the first case was brought to trial the government's case was so flimsy that the judge decided it without letting it go to the jury.

"The committee is again after a sensation, and so it publishes the charges which two former minor employes of the Shipping Board have laid before the committee. It publishes these without giving the officials of the Shipping Board and the Fleet Corporation an opportunity to reply.

"Why has it published these charges before it has investigated their validity? What malevolent, vindictive purpose is there behind this procedure?

"Why, for once, doesn't the committee give its attention to the wholesome atmosphere of the hold and deck of the structure, and quit being just a bilge water committee?

"Now, coming more specifically to the charges:

"The Emergency Fleet Corporation had two divisions, one in charge of ship construction, one in charge of ship operation. Charles M. Schwab's connection, and my own, were with the division of ship construction, and my reply concerns the charges against that division.

"When we went into war substantially every existing shipyard was engaged on navy work, and our ship construction had on that account to be largely confined to newly created yards, new managements, new and inexperienced men.

"There were 181 shipyards, employing 385,000 men, under the direction of our division. There was among this number less than the average of human dishonesty. But there were examples of pay roll padding and petty graft. A well-developed corps of investigators were constantly on guard, and offenders were brought to summary punishment.

"As to the other charges, I want to say that during my incumbency of nineteen months as one of the executives of the Emergency Fleet Corporation there was not a single case in which any contract was let as a result of either political or other influence, and I challenge the committee to bring forth a single example.

"As to the charge that there were doctors, barbers and dry goods clerks employed as inspectors in the shipyards, I need only say that the same character of men occupied positions as privates and officers in the American expeditionary force, and, I am glad to add, acquitted themselves creditably.

"Will the committee please indicate how a force of 40,000 shipbuilders can, in nine months' time, be expanded to 385,000 without bringing in some doctors, barbers, dry goods clerks and other trades and vocations?

"Mistakes were made in selecting contractors, but it is only fair to say that during the early days of the Emergency Fleet Corporation contractors were not willing to enter the untried field of shipbuilding, and even the most promising ones did not always pan out.

"The government, like any other concern in business, had during the war to accept the penalty of its unpreparedness by suffering occasional loss, due to the high pressure and lack of time under which negotiations were conducted.

"I was asked by Senator Harding during an examination by the Senate committee on commerce early in 1918: 'Are you spending money profligately enough to get results?' and I said 'Yes.' In those days results were the only things that did count."

### LOAN TO RUTLAND RAILROAD

The Commission has approved a loan to the Rutland Railroad Company of $61,000 to aid the carrier in making additions and betterments to way and structures at a total estimated cost of approximately $89,000. The carrier itself is required to finance about $28,000 to meet the loan of the government.

# Shipping Decisions

Cases Recently Decided by State and Federal Courts



**Delay in Unloading:**

(Circuit Court of Appeals, Second Circuit.) The shipowner makes out a prima facie case for demurrage by proof of delay, and the burden then lies on the charterer or consignee to prove that the delay was due to the fault of the shipowner.—The Hans Maersk. Aktieselskabet Dampskibselskabef Af 1912 vs. 20,029 Bags of Sugar (Arbuckle Bros., Claimant) et al. Same vs. Jamison et al., 266 Fed. Rept. 806.

A shipowner is bound to employ sufficient stevedores to deliver the cargo at the vessel's rail at the rate specified by the charter, though it would not be liable if it was prevented by strike or other cause beyond its control from employing the stevedores.—Ibid.

Where the consignee neglected to send men to trim the lighters as sugar was loaded on them, as a result of which some of the stevedores employed by the ship had to do that work, so that the ship failed to deliver the specified number of bags of sugar per day, the delay was due, in part, at least, to the fault of the consignee, rather than to shipowners' fault in failing to employ sufficient stevedores, and it is liable for the demurrage specified by the charter.—Ibid.

Where the bill of lading provided for delivery of sugar to the consignee, "on payment of steamship freight and all other charges, as per charter party," the provision of the charter party for demurrage and the lien therefor were incorporated in the bill of lading, and the consignee is liable for the demurrage, the charterer having the benefit of the cesser clause of the charter party.—Ibid.

Where a charter party provided for demurrage for each day's detention by default of the charterer, the term "default" does not mean that the charterer is liable only for delays due to his own fault, but renders him liable for all delays in the performance of his covenant to unload, not due to vis major or to the fault of the shipowner.—Ibid. (Ed. Note.—For other definitions, see Words and Phrases, First and Second Series, Default.)

**Collision:**

(Circuit Court of Appeals, Fourth Circuit.) A Norfolk harbor rule, providing that "vessels * * * are forbidden to anchor in the channel," held supplanted by the federal statute (act March 3, 1899, 15 (Comp. St. 9920), providing that "it shall not be lawful to tie up or anchor vessels or other craft in navigable channels in such manner as to prevent or obstruct the passage of other vessels or craft."—The City of Norfolk, The Hawkhead, 266 Fed. Rept. 641.

Act March 3, 1899, 15 (Comp. St. 9920), making it unlawful for vessels to anchor in channels in such manner as to prevent or obstruct the passage of other vessels, does not permit a vessel to anchor voluntarily in a channel when, although there is sufficient room for other vessels to pass, her presence there imperils them or requires more than ordinary skill or care in their navigation, and masters are charged with knowledge that the coming of fogs or storms may make an anchored vessel an obstruction, where it would not be in fair weather.—Ibid.

A vessel caught in a dense fog while moving in a channel is justified in anchoring in the channel, giving the statutory signals, where that appears less dangerous under the circumstances and conditions than proceeding to the open sea or established anchorage grounds, and, in case of collision while so anchored, is entitled to the presumption in favor of a vessel at rest against a moving vessel.—Ibid.

"Moderate speed," with reference to the duty of a master and pilot of a vessel caught by a dense fog in a channel, in which the vessel at anchor would be an obstruction to another vessel navigated with due care, to get out of the way of other vessels by moving on with moderate speed to the nearest anchorage grounds or the open sea, means speed so slow that the vessel can be stopped within the distance at which another vessel can be seen.—Ibid.

(District Court, S. D., Florida.) A dredge and a tug both held in fault for a collision between the tug and the pipe line from the dredge to the shore, where the dredge was not working and had notice in time to disconnect the pipe line, and the tug, by stopping until the disconnection was made, could have avoided the injury.—The Baiscayne, 266 Fed. Rept. 956.

Interest on the recovery in a collision case disallowed, where the case had been pending 12 years before submission.—Ibid.

**Jurisdiction:**

(District Court, S. D., Alabama.) In view of the shipping act (Comp. St. 8146a-8146r), and act Cong. March 9, 1920, Emergency Fleet Corporation of United States Shipping Board held an instrumentality of the federal government, not to be sued in a state court, but in a federal District Court, under Judicial Code, 24 subd. 20 (Comp. St. 991), (20).—Southern Bridge Co. vs. United States Shipping Board Emergency Fleet Corporation, 266 Fed. Rept. 747.

**Evidence:**

It is a matter of common knowledge that at the time of creation of the Emergency Fleet Corporation the government was greatly interested in the building of ships to overcome the German submarine menace.—Ibid.

**Pleading:**

Plea in abatement is merely to put the instant suit out of court, and to give a better writ to plaintiff for another suit.—Ibid.

**Removal of Causes:**

Removal of suit from a state court to the federal District Court, does not recreate it, and if the state court had no jurisdiction, it is the duty of the District Court so to declare, the question being properly raised by plea in abatement, though such suit might have been brought in the District Court.—Ibid.

**Wharves:**

(District Court, E. D., Pennsylvania.) There is no obligation of duty on the part of the owner of a private wharf to give notice of an existing danger to vessels which may make use of the wharf, although not invited by the owner to do so, but the duty is on the uninvited user to make inquiry.—McAvoy vs. Camden Shipbuilding Co. The Pacific, 266 Fed. Rept. 710.

**Canals:**

(Circuit Court of Appeals, First Circuit.) The dredged approach to the Cape Cod Canal through the navigable water of Buzzard's Bay, which was necessary to enable vessels to reach the canal, is for some purposes a part of the canal.—Boston, Cape Cod & New York Canal Co. vs. C. W. Chadwick & Co., 266 Fed. Rept. 775.

A licensed pilot of a canal company, which furnished such pilots to vessels passing through the canal under its charter authority to assist vessels in their approach to and from the canal, is acting within the scope of his employment by the canal company while piloting a vessel through the dredged approach to the canal in Buzzard's Bay, so as to render the canal company liable for his negligence.—Ibid.

**Canal Company's Liability for Negligence:**

Where a canal pilot furnished by the canal company assumed to pilot a vessel through the dredged approach to the canal, the canal company is liable for his negligence, regardless of whether the vessel was required to take the pilot for its passage through such approach.—Ibid.

A canal company, which licensed a pilot to assist vessels through the canal, cannot avoid liability for his negligence while piloting a vessel through the dredged approach to the canal in a navigable bay, on the ground that he had no government license to pilot in such bay, so that his employment by the vessel violated Rev. St. 4438 (Comp. St. 8200).—Ibid.

**Salvage:**

(District Court, E. D., South Carolina.) Where two steam tugs under common management were engaged in a common undertaking of salvage, the success of one of them after the other was disabled by accident is to be credited, to some extent, at least, to the other.—The Apalachee, The Waban, The Cecelia, 266 Fed. Rept. 923.

Where steam tugs aided in pulling off a vessel worth \$450,000 from sand, where she was stranded, but it was doubtful whether the final result was not attained by the vessel alone, and the operation involved no great danger, \$10,000 may be awarded as salvage, in addition to the damage sustained by the tugs.—Ibid.

A salvage award of \$10,000 will be distributed 80 per cent to the owners of the salvaging tugs, and 20 per cent to the crews, in the proportion of the monthly wage of each member.—Ibid.

**Suits Against Shipping Board:**

(District Court, E. D., Pennsylvania.) The United States Shipping Board Emergency Fleet Corporation, a corporation of the District of Columbia, held not immune from suit because of the ownership of its entire capital stock by the United States.—Perna vs. United States Shipping Board Emergency Fleet Corporation, 266 Fed Rept. 896.

(District Court, E. D., Pennsylvania.) Act March 9, 1920, 1, 2, prohibiting the arrest or seizure of vessels or cargoes owned or possessed by the United States, or by any corporation in which the United States owns the entire stock, and providing that, where suits in rem against such vessels or cargoes would be maintainable as against private owners, suits in personam may be brought against the United States or the corporation, as the case may be, has for its sole purpose preventing interference with the operation of government owned or controlled vessels employed in commerce, by substituting for suits in rem authorized by Shipping Board act, September 7, 1916, 9 (Comp. St. 8146e), suits in personam, and it has no application to a suit in personam against the United States Shipping Board Emergency Fleet Corporation, arising out of breach of contract.—Banque-Russo Asiatique-London vs. United States Shipping Board Emergency Fleet Corporation et al. The Kittegaun, 266 Fed. Rept. 897.

# Miscellaneous Decisions

**Traffic Cases Recently Decided by State and Federal Courts**



## REGULATION OF COMMON CARRIERS

**Jurisdiction:**

(District Court, N. D., Alabama, S. D.) A suit to enjoin a practice of a railroad company, in time of a shortage of coal cars, to deliver assigned cars, whether its own or those of other railroads or private owners, to mines with which the owners had contracts for coal, counting them against the quota of such mines under their respective ratings, under interstate commerce act, 1, par. 12, as amended by transportation act, Feb. 28, 1920, and distributing commercial cars only to fill such quotas, held to present an administrative question for determination by the Interstate Commerce Commission and not within the jurisdiction of the District Court.—Corona Coal Co. vs. Southern Ry. Co., 266 Fed. Rept. 726.

Where a preliminary injunction, granted by a state court ex parte without notice, is dissolved by a federal court after removal of the cause and a hearing, on the ground that neither court has jurisdiction of the subject matter, the court will not, in the exercise of its discretion, allow a supersedeas to continue the injunction in force pending an appeal.—Ibid.

# Loss and Damage Decisions

**Cases Recently Decided by State and Federal Courts**



## LOSS OF OR INJURY TO GOODS

**Negligence:**

(Supreme Court of Iowa.) Though a person who took his baggage to a station, intending to check it in anticipation of his departure next day, was not a passenger or shipper, so as to impose special obligations to care for the baggage on the carrier before it actually was checked, he was not a trespasser or mere licensee, and the carrier is liable for injury to the baggage caused by its negligent acts.—Reis vs. Minneapolis & St. L. Ry. Co., 179 N. W. Rept. 83.

Though evidence that plaintiff's baggage, which he had left at the station preparatory to checking, was injured by water, when the carrier's water tower fell and flooded the platform, and that the tower had been in a defective condition and leaning in the direction of the platform for some time was undisputed, the conclusion of the carrier's negligence under the facts was for the jury, not for the court, so that a directed verdict for plaintiff was reversible error.—Ibid.

**Evidence:**

(Court of Appeals of Georgia, Division No. 2.) In a suit against the American Railway Express Company to recover for the loss of a shipment claimed to have been consigned by the plaintiff to the Southern Express Company, where it appears that the Southern Express Company had ceased to do business, and, while it had not surrendered its charter, its equipment, including wagons, horses, trucks, office furniture, etc., had been taken over by the American Railway Express Company and that the American Railway Express Company now carries on the business formerly carried on by the Southern Express Company, evidence that the shipment had been delivered to a driver of a wagon of the Southern Express Company on or about April 1, 1918, and that this company had failed to deliver it to the consignee, in the absence of evidence authorizing the inference that the shipment had left the possession of the Southern Express Company before its business had been taken over by the American Railway Express Company, authorized the inference that the shipment was delivered to and remained in the possession of the Southern Express Company, and was by that company delivered to the American Railway Express Company, when the latter, on July 1, 1918, succeeded to the business of the Southern Express Company, and took over its equipment, etc. Possession once proved in the Southern Express Company is presumed to exist in that company until the contrary is shown. Anderson vs. Blythe, 54 Ga. 507, 508. Where the business of that company, including all of its equipment, etc., was transferred within three months thereafter to the American Railway Express Company, the inference was authorized that all shipments in the possession of the Southern Express Company were then transferred to the American Railway Express Company. Whether or not the latter company received the shipment was a question of fact for determination by a jury.—American Railway Express Co. vs. Archer, 104 S. E. Rept. 92.

Evidence that claims against the Southern Express Company, which were paid by the American Railway Express Company, were charged against the Southern Express Company was properly excluded.—Ibid.

Evidence that the records of the Southern Express Company failed to show a receipt of the alleged shipment was properly excluded, since it nowhere appeared that it was the custom and duty of that company to make such entries in the regular and usual course of business. Shields vs. Carter, 22 Ga. App. 507, 96 S. E. 330 (3).—Ibid.

**Pleading:**

The petition alleged that, on or about April 1, 1918, the plaintiff in Atlanta, Ga., delivered to the Southern Express Company, a carrier of express, goods belonging to the plaintiff of a certain description and value to be transported and delivered by the Southern Express Company to petitioner at Petersburg, Va., and that, on or about July 1, 1918, "The Southern Express Company retired from business and the American Railway Express Company, defendant herein, assumed and took over the business of said Southern Express Company, its property, rights, and liabilities," that the Southern Express Company and the defendant American Railway Express Company had failed and refused to deliver after demand the goods to the plaintiff, and that the plaintiff had never received the same. This petition, properly construed, lays such a case as made by the evidence and was not subject to general demurrer.—Ibid.

**Verdict:**

The verdict for the plaintiff not being demanded as a matter of law it was error upon the part of the judge of the municipal court to direct a verdict for the plaintiff. It was error to overrule the certiorari.—Ibid.

**Carrier Liable:**

While a consignor of a shipment, delivered to a carrier, which afterward goes out of business and is succeeded by another carrier, may not, where there is no privity of contract between him and the latter carrier, recover against such carrier on the contract of shipment, yet, where the shipment was not lost through fault of the original carrier, but was delivered by the original carrier, to the carrier succeeding to its business and was by the latter carrier lost, the consignor may recover against the latter carrier for the conversion of the shipment thus actually had and received.—Ibid.

# COMPLAINTS FILED WITH I. C. C.

*The Traffic World Washington Bureau*

The Commission, on November 11, gave out the following letter to John F. Finerty, assistant general counsel, United States Railroad Administration:

"Referring to your letter of October 19, in which you state there is some apprehension that the Commission may not permit shippers to file formal complaints after March 1, 1921, should the Director-General after that date refuse to adjust on the informal docket informal complaints filed with the Commission prior thereto. This matter has been considered in conference by the Commission.

"Rule III (e) of the rules of practice provides that complaint for the recovery of damages may be informal, provided it contains certain information and that it must be filed within the statutory period. Paragraph (g) of that rule provides that if an informal complaint for the recovery of damages cannot be disposed of informally or is denied on the informal docket, or is by complainant withdrawn from further consideration, the parties affected will be so notified in writing by the Commission; that in any such case the matter will not be reconsidered unless within six months after the date of mailing such notice to complainant it is resubmitted on the informal docket or formal complaint is filed; and that if so filed the formal complaint will be deemed to relate back to the date of the filing of the informal complaint. Appendix No. 1 contains special rules of practice governing the procedure to be followed as to causes of action arising out of federal control. In paragraph (l) it is stated:

> Except as hereinafter provided, proceedings upon causes of action arising out of federal control will be governed by the Commission's rules of practice in so far as applicable.

"There is no proviso which would prevent the application of rule III-(g) to causes arising under section 206-(c) of the transportation act.

"It is therefore the informal view of the Commission that the phrase 'filed with the Commission,' as used in paragraph (c) of section 206, should be interpreted in the same manner in which the Commission has interpreted that phrase in other connections, and that except where otherwise provided in appendix No. 1, our rules of practice, including paragraph (g) of rule III, are applicable in connection with that portion of the transportation act."

# Questions and Answers

In this department will be answered questions of both legal and practical nature that confront persons dealing with traffic. A specialist on interstate commerce law, who is a member of our legal department, will give his opinion in answer to any simple question relating to the law of interstate transportation of freight. A traffic man of long experience and wide knowledge will answer questions relating to practical traffic problems. We do not desire to take the place of the traffic man but to help him in his work. Persons desiring immediate answer by mail or wire or a more elaborate treatment of any question—by the citation of authorities in a legal opinion, for instance—may obtain this kind of private service by the payment of a reasonable fee. The right is reserved to refuse to answer in this department any question, legal or traffic, that it may appear to us unwise to answer or that involves a situation too complex for the kind of investigation herein contemplated.
Address Questions and Answers Department.
Traffic Service Corporation, Colorado Building, Washington, D. C.

### Misroute—Carriers Liable for Failure to Observe Routing Instructions as to Terminal Delivery

**North Carolina.**—Question: Southern Railway bill of lading dated May 1, 1920, for car of lumber consigned to W. Granville Taylor, Portsmouth, O., route "Cheapest for B. & O. delivery."

Mr. Taylor notified agent of the B. & O. to deliver car to Breece Manufacturing Company on arrival. Car arrived Portsmouth via Norfolk & Western Railroad and remained with that line for five days, when Mr. Taylor was wired asking for disposition. He supposed wire was from agent of the B. & O. and answered saying, "Deliver to Breece Manufacturing Company." It seems that the Norfolk & Western could only make delivery to Breece Manufacturing Company by reshipping car from Portsmouth to New Boston, O., at an additional expense of 7 cents per 100 pounds.

Thirty-six dollars ($36.00) car service and storage accrued before Norfolk & Western knew what disposition to make of the car. Does routing as carried in bill of lading and fact that agent of the Baltimore & Ohio had delivery order protect shipper against storage and demurrage and entitle him to cheapest rate for B. & O. delivery?

Answer: The Interstate Commerce Commission has held in a number of cases that, where terminal delivery only is shown in the bill of lading, it is the duty of the carriers to forward the shipment to the destination named by the cheapest reasonable route affording the desired delivery. See Trexler Lumber Co. vs. S. Ry. Co., 42 I. C. C. 719, and American Woods Corporation vs. Southern Ry. Co., 40 I. C. C. 63.

Assuming that a lower rate from origin to destination was applicable via the Southern Railway in connection with the B. & O. Railroad direct, or via some other route which includes the B. & O. Railroad as a delivering line, the Southern Railway is liable for any additional charges due to its failure to forward the shipment via the route specified in the bill of lading.

### Freight Charges—Collection of, From Consignee

**Virginia.**—Question: A, located at X, ships B, located at Z, a shipment that B did not order, and which was refused by B upon arrival at destination.

The Commission has ruled that legal charges must be paid, but has refrained from saying whether carriers must collect from the shipper or consignee. It is obvious that in a case of this kind that the carrier should exhaust its legal remedies to collect from the shipper; but if it should happen that before the efforts of the carrier are exhausted the shipper becomes insolvent, would it, in a case such as just cited, be necessary for the carrier to take legal action against consignee, bearing in mind that the consignee not only did not order the shipment but instructed the shipper not to ship it?

Answer: If the consignee of a shipment was in no way responsible for the forwarding of the shipment and has refused to accept same, the carrier cannot collect the charges from him and would hardly resort to a suit for the collection thereof under such circumstances.

### Demurrage—Empty Private Tank Cars

**Texarkana.**—Question: What constitutes sufficient notification of release of equipment is not quite clear to us and wish to ask your valued opinion with reference to same. For illustration, would say that we receive daily from shippers at distant points private tank cars under load on which we have forty-eight hours of free time.

Each day at 7 a. m. we make a check of our yards and send what we term our "switching record" to each of the carriers showing cars under load, or empty and released as of 7 a. m. If our record sent to carriers on third day shows cars empty and released as of 7 a. m., which time would be end of free time, would we be subject to demurrage for that day, when also bill of lading is issued and signed for by carrier to transport the cars back to consignee? Carriers here claim that inasmuch as bill of lading issued on third day notwithstanding cars emptied night before and shown released as of 7 a. m. on switching record. Does section 3, paragraph 2, of rule 3, Fairbanks' Tariff 4-A, cover this?

Answer: While as to carriers' equipment the rule is that such cars as are empty at 7:00 a. m. of the third day, this rule does not apply to private tank cars for which billing must be furnished either by the owner thereof or by the consignee, according to previous arrangement. With respect to such equipment the general rule which governs the outbound movement of carload freight, namely, that the car is not released until billing has been furnished, governs, and therefore if a bill of lading is not taken out until the third day, demurrage will accrue for that day.

### Demurrage—Shipper's Action in Unloading Car Before Actual Placement Relieves Carrier of Duty to Spot Car

**New Jersey.**—Question: Will you kindly enlighten us on the following? We have a car constructively placed on August 2; under date August 6 we placed order with carrier to spot this car at our warehouse at door No. 2; being in need of the commodity contained therein, unable to wait any more than a reasonable length of time, and waited until the 19th, which we considered unreasonable, therefore sending one of our teams to take a load out for immediate use, presuming that the car would be spotted within a few days. The carrier did not perform this service, consequently on August 24 we needed more of the commodity contained therein and took out as much as we needed for immediate use, leaving little less than one-half carload. Desiring to release the equipment, we carted the rest of the commodity to our warehouse, thereby relieving the carrier of his duty to make this spot service. We were quite surprised to receive a demurrage bill from the carrier, insisting that August 19 was considered day of placement, inferring that our action of taking part of the contents of the car automatically construed the idea that we accepted delivery at the constructive placement of the car.

Our opinion of this matter is that they were unable to fulfill their duty to us and that in carting the stuff they owe us a vote of thanks, inasmuch as we made no effort to collect for carting the contents to our warehouse and were perfectly willing to recognize the bill adjusted to read, the day of placement being the day on which our teams finally emptied the car. This is indeed a complicated subject and we would like you to give us as much information as possible.

Answer: While there is no provision in the demurrage rules covering a situation such as you outline, we are inclined to believe that the carrier is correct in its position in insisting that August 19 must be considered as the day of placement, inasmuch as you, by your action in partially unloading the car on that date, and subsequent unloading of the car, relieved the carrier of its duty to spot the car at your warehouse door.

### Demurrage—Average Agreement

**Ohio.**—Question: A purchased from B a carload of billets which B orders shipped direct to A by C, who forwards this shipment on order notify bill of lading, attaching same to sight draft, and draws on B. Bill of lading becomes lost and B is, therefore, unable to pay draft, which results in delay to car at A's plan. A is working under the average agreement and carrier renders separate bill for demurrage on this car, claiming that it cannot be included in the average agreement statement for the reason that it was an order notify shipment. We are unable to find any rule in Demurrage Tariff 4-A which states that separate account shall be kept for this class of shipments.

Answer: The mere fact that a shipment is made on an order-notify bill of lading and that through the loss of this bill the delivery of the shipment is delayed until demurrage accrues is in and of itself no reason for excluding the car from an average agreement statement, unless the shipment was one covered by paragraph 2 of section B of rule 2 of the demurrage rules, such cars, in accordance with section E of rule 9, being excluded from an average agreement statement. Whether or not the car in question is one subject to paragraph 2 of section B of rule 2 is not clear.

### Application of Rates

**Nebraska.**—Question: Taking advantage of your Question and Answer Department, kindly refer to rule 285, page 15, Western Trunk Line No. 17, I. C. C. No. A-786, and more particularly that portion specifically set out as a "Note." I believe that you will agree with me that one-half fourth class rate will apply on shipments of empty drums between points in Nebraska and points in Kansas or interstate shipments. I also believe the Nebraska Railway Commission recognizes the authority of the Interstate Commerce Commission, or, in other words, permits shippers to take advantage of rule 285 on shipments destined to or from a headline point mentioned in rule 120.

It occurs to me, since shipment above mentioned is governed by Western Classification and C. B. & W. G. F. O. 5000 B, I. C. C. 10610, both tariffs being subject to exceptions outlined in Western Freight Tariff Circular 17, I. C. C. A-786, all three of which were approved by the Interstate Commerce Commission, such rates and rules as carried in above mentioned tariffs should apply. Technically speaking, would not this be termed an interstate shipment for the simple reason it is governed entirely by the interstate tariff and intrastate rates applied? In order for this shipment to be termed intrastate, to my notion, it would

be necessary to apply rules and rates as carried in Nebraska classification No. 1 and general order 19.

To make a long story short, the point I wish to bring out is simply this: Does one-half fourth class rate apply on shipments of empty drums originating at Beatrice and destined to Omaha, the point of origin and destination, as well as the entire movement, being within the state of Nebraska?

Answer: Section 3 of C. B. & Q. Tariff GFO 5000-B, I. C. C. No. 10610, provides, in section 1 thereof, for specific class and commodity rates between Omaha and Beatrice, Neb., which rates alternate with the distance scale carried in section 7 thereof. Therefore, the rates in section 3 being filed with the Interstate Commerce Commission and alternating with the rates in section 7, are both interstate rates and Nebraska intrastate rates. Inasmuch as a shipment originating at Beatrice, Neb., and destined to Omaha, the entire transportation being within the state of Nebraska, is an intrastate shipment and the application of item 285 of E. B. Boyd's I. C. C. A-786 is restricted so that it will not apply on Nebraska intrastate traffic between points shown in item 120, the basis shown in item 285 cannot be applied on empty drums moving from Beatrice to Omaha. The rate to apply will be the class rate for the rating under the Western Classification unless the Nebraska state rates, as governed by the Nebraska Classification may be applied if lower than the rates named in C. B. & Q. I. C. C. No. 10610. W. A. Poteet's I. C. C. 320, canceled by E. B. Boyd's I. C. C. A-786, made clear that Nebraska state rates were to be applied on such shipments if the movement was a one-line haul.

### Through Rate Vs. Lowest Combination

**Wisconsin.**—Question: I note in your issue of Traffic World for October 30, page 821, question under "Illinois," and answer in which you refer them to Kanotex Refining Company vs. A. T. & S. F. Railroad, 34 I. C. C. 271, and state that under the decisions of the Interstate Commerce Commission and the United States Supreme Court, the through rate plus the reconsigning charge should be assessed on a shipment made under the circumstances outlined in the question. The question follows:

> On January 13, 1920, we shipped a car of wood to ourselves at Chicago. We paid the freight at Chicago, made out new bill of lading and rebilled the car to Milwaukee, Wis., in order to obtain a better rate as the two joint rates were less than the through class rate. The carrier which hauled the car to Chicago is endeavoring to collect reconsigning charge of $5.15, stating that the car was not reconsigned until after arrival. It is our contention that this is a reshipment and therefore no reconsigning charge is due.

We do not think that you have given this question the proper consideration, although it is true that the Interstate Commerce Commission made such a decision in the case referred to, but various state Supreme Courts, as well as the United States Supreme Court, have decided in numerous cases that where an interstate shipment is made from a point within one state to a point in another state and new billing is taken out at the original billed destination and rebilled to another destination within the bounds of that state, that it is applicable to the intrastate rates.

However, this question does not state that this shipment was made from a point in the state of Illinois, and entire transportation was intrastate; however, we assume that it was.

We respectfully refer you to C. M. & St. P. Railroad Co. vs. Iowa, which case was decided April 13, 1914, by the United States Supreme Court, 233 U. S. 334; 34 Supreme Court Report 592; 58L. Ed. 988, in which they showed the Gulf, Colorado & Santa Fe case, in which Mr. Justice Hughes of the court said:

> The fact that commodities received on interstate shipments were reshipped by the consignee in the cars in which they are received to other points of destination, does not necessarily establish the continuity of through movement or prevent the reshipment to a point withon the same state from having an independent and intrastate character.

This case is carried under 204 U. S. 403, as cited. We think that with this information you will be in a position to reprint your answer to "Illinois" in your next issue.

Answer: We were aware of the decisions cited by you when answering the question you refer to, but in view of the fact that the rebilling of the shipment was done solely for the purpose of defeating the through rate and the intention of the shipper was to forward it beyond the rebilling point at the time the shipment left origin, we are of the opinion that it falls within the class of cases covered by the decisions of the Supreme Court of the United States referred to in the Commission's opinion in Kanotex Refining Co. vs. A. T. & S. F. Ry. Co., 34 I. C. C. 271, as sustaining its decision therein.

### Misrouting—Interstate Vs. Intrastate Route

**Ohio.**—Question: We notice an answer to a question relative to an interstate shipment in your issue of The Traffic World of August 24, 1918. This answer was based on the fact that, although the point of origin and destination were in the same state, it was absolutely necessary that shipment had to leave the bounds of one state in reaching its destination and pass through another state.

We would like to have your decision on a similar case where it is not necessary for shipment to leave one state that both point of origin and destination are located in, there being a natural workable route via one carrier's line, but they apparently forwarded this business we have in mind via another workable route of theirs that necessarily takes it into another state and back again.

Answer: The Commission has held in several cases that a shipment is misrouted which is forwarded over an interstate route at a higher rate than would have applied had the shipment moved via an available intrastate route. See Lathrop Lumber Co. vs. A. G. S. R. R. Co., 27 I. C. C. 250; McCaull-Dinsmore Co. vs. Great Northern Ry. Co., 41 I. C. C. 178, and Page & Hill Co. vs. St. P. M. & O. Ry., 51 I. C. C. 487

### False Floors in Refrigerator Cars

**Michigan.**—Question: On October 17, 1919, the United States Railroad Administration, Division of Operation, in their Mechanical Department Circular No. 7, addressed "To Railroads," instructed carriers to place permanent floor racks in all refrigerator cars. On December 9, 1919, we purchased a carload of lettuce and cauliflower from a California shipper and car was shipped to us the same day. On his invoice he billed us with an item of $6, covering cost of false floor. It will be clear to you that had the carriers consistently followed the instructions of the Railroad Administration, it would not have been necessary for the shipper to have placed this false floor in the car and we would not have been called upon to assume any such expense. We have filed claim with the originating line, asking them to reimburse us for the cost of this false floor, but they have refused to do so, claiming that they have no tariff authority under which the item can be reimbursed. Kindly advise us your opinion as to whether or not the carriers should assume this item.

Answer: In Docket 10664, Perishable Freight Investigation, 56 I. C. C. 449, the Interstate Commerce Commission, in considering the provisions of rule 45 of the proposed Perishable Protective Freight Tariff, on page 556, said:

> Rule 45 provides, in substance, that shippers must properly prepare their goods for shipment, including such matters as packing, stowing and bracing; and also install false floors or floor racks when necessary for safe transportation. It relates to carload shipments only.
>
> The function of a false floor or floor rack is to improve the circulation of air in the car by permitting its passage underneath the lading. It tends to prevent freezing in a "dry" or heater car and also helps the process of refrigeration when ice is used. Shippers, it seems, sometimes superimpose a second false floor upon the permanent one with which cars are often equipped. Not all commodities require a false floor or rack for their protection and some commodities require one only under extreme weather conditions.
>
> The shippers object particularly to that part of the rule which relates to the installation of these temporary false floors or racks when needed to permit of safe transportation. They contend that the duty rests upon the carrier to furnish suitable equipment and assert that the United States Railroad Administration in Mechanical Section Circular No. 7 and Circular CS-43 has recognized that floor racks or false floors are an essential part of the equipment of an insulated car. Many cars now have permanent false floors and it is urged that it would be discriminatory to furnish such permanently equipped cars to some shippers and require others to install temporary false floors at their own expense.

Again on page 557 the Commission said:

"The term 'standard' as applied to ventilated or refrigerator cars, presents difficulties of interpretation, but it should be held to cover all appliances which have come to be regarded as essential to the proper functioning of such cars in the ordinary course of transportation. The evidence shows, we think, that a permanent false floor is in this category, and so regarded by the Mechanical Section of the Railroad Administration. Under the circumstances, while it may be the duty of the shipper to install a temporary false floor or rack in the exceptional cases where one is necessary in addition to a permanent false floor, it can hardly be regarded as his duty when the necessity is created by the failure of the carrier to perform its own duty in the premises. Clause (A) of rule 45 should therefore be revised to read as follows:

> It shall be the duty of shippers or owners to properly prepare their goods for shipment, including packing, wrapping, loading, stowing and bracing; also to furnish and install temporary false floors or racks when needed to permit of safe transportation in a car equipped with a permanent false floor.

In compliance with the Commission's conclusions, the carriers have incorporated in item 45 of Perishable Protective Freight Tariff No. 1 the rule quoted above.

Inasmuch as permanent as distinguished from temporary floor racks are presumed to be a part of the equipment of "standard" ventilated or refrigerator cars, we are of the opinion that the carrier is not warranted in billing you for the cost of the permanent false floor.

### Inspection of Car for Loading

**Missouri.**—Question: Two months ago this company received a car loaded with grain from a point in Kansas on the A. T. & S. F. R. R., which we unloaded. An inspection of the car was made by our superintendent before unloading to note any defects or signs of leakage. The car was unloaded with no exceptions noted, and as there was no bad order tag or other visible evidence that the car was not fit for reloading, we asked the loading line to set the car on the opposite side of our plant

for reloading of our manufactured product (live stock feed), destined to Atlanta, Ga. During the time of unloading and reloading no objection was made by the loading line to reloading the car, nor was any objection made by the initial carrier at the time bill of lading was issued. In fact, all carriers at this point have for many, many years permitted receivers of all inbound shipments to reload same without objection or protest, because no re-inspection of the car was made by them before reloading. Nor to this day have they given us verbal or written notice that all cars received under load must be reinspected before reloading, but have initiated a policy of refusing to consider claims for loss or damages in such instances, alleging that they did not have an opportunity to inspect the cars before reloading and, therefore, not liable.

This company never has, nor does it now, object to the inspection of cars for reloading by loading carrier. And, in view of the fact the loading carriers here have permitted shippers to unload and reload cars, and have until now paid all loss and damage claims resulting from loss or damage in transit in such cases, it appears to the writer that the loading carriers have waived whatever legal rights they might otherwise have had by accepting shippers' inspection of cars loaded in lieu of going to the expense of employing an inspector of their own and locating him at our plant for that purpose. This company does not deny the carriers the privilege of inspecting cars for shipment, but if, for their own convenience, they neglect to do so, we feel they should be responsible for loss and damages to such shipments in transit.

This company never has knowingly loaded defective equipment. We have in our employ trained car inspectors, equal to or better than the average car inspector employed by the railroads, and it is their duty to make a complete report in writing of all cars loaded and unloaded at our plant, showing a detailed statement of defects, if any, and the assumption of the railroads that the loss or damages is a result of loading defective equipment is presumptuous, to say the least, and cannot be substantiated. Therefore, we will ask you to consider the facts as above outlined and advise us as to the legal status of pending claims as stated.

Answer: A carrier should be given an opportunity to inspect cars before they are loaded, for under the law the duty devolves upon the carrier to provide safe and suitable vehicles for the carriage of the particular goods which it holds itself out to carry, and it cannot escape this responsibility by shifting upon the shipper the duty of inspecting and selecting the car in which his goods are to be carried.

Michie on Carriers, Volume 1, section 1018, says: "It is not the duty of the shipper to inspect a car furnished by a carrier, or to exercise care to know whether the car is in condition, but he may assume that the carrier would not have directed the placing of the goods in the car unless it was suitable."

If the manner of handling cars for reloading by the carriers in question can be construed to be a waiver of their right to inspect such cars before loading, as we believe it is, although we are not aware of any decisions to that effect, then their failure to do so is no defense to the payment of your claim.

However, in order to avoid disputes of this nature, it would be well for you to notify the carrier in each instance and secure their authority before reloading the car.

### Routing—Shipper's Instructions

**New Jersey.**—Question: The Pennsylvania Railroad issued a permit to the A. C. L. to accept a shipment of lumber for Passaic, N. J., N. Y. S. & W. delivery. The shipper issued bill of lading, routing car via A. C. L. N. Y. P. & N. P. Railroad, failing to insert N. Y. S. & W. delivery. Car arrived Passaic, Erie delivery, and we therefore reconsigned car to N. Y. S. & W. delivery. We will appreciate if you will kindly advise us whether we can file claim for the difference in rate, on account of error on part of the agent, in accepting car without specific delivery called for on permit.

Answer: Inasmuch as the shipper prepared the bill of lading, the carrier cannot be charged with the additional expense incurred by reason of the failure of the shipper to insert in the bill of lading the delivery desired. The routing shown in the bill of lading governs the movement of the car and, while the permit was for N. Y. S. & W. delivery, as a carrier may always disregard its own embargoes as was done by the Erie in the instant case, we are of the opinion that the carrier is not liable for failure to delivery the shipment to the N. Y. S. & W. at destination.

### Notice to Consignor of Refused or Unclaimed Freight

**Georgia.**—Question: We made an interstate shipment to a customer. This customer was advised by the transportation company that the shipment in question was ready for delivery. He promptly notified them and it was refused on account of misunderstanding in the purchase.

We were not notified until thirty days later that the shipment was refused. In the meantime, storage charges for thirty days were assessed on this shipment, without giving us any notice of the customer's refusal, or giving us an opportunity of having this shipment returned, and when customer was asked why we had not been notified regarding this, he makes oath before an officer that he promptly notified the transportation company that this shipment was refused and they should have notified us. We have filed claim for refund of the storage and demurrage. Freight claim agent states it was not their duty to give us any notice, but that the shipment could be sold for storage and charges without even notifying us.

If there is any prescribed rule to which you can refer us, please let us have the same, so we can see if we cannot enlighten the claim agent, as we do not think this is fair to any shipper to allow a shipment to remain indefinitely on storage, without giving him an opportunity of having it returned or removed.

Answer: Paragraph 1 of section B of rule 2 of J. E. Fairbanks' Storage Tariff No. 1-B, I. C. C. No. 9, provides: "Where shipments have been plainly marked with the consignor's name and address, preceded by the word "from," notice shall be immediately sent or given consignor of refusal of less-than-carload shipments. Unclaimed less-than-carload shipments will be treated as refused after fifteen calendar days from expiration of free time." This provision has been carried in the uniform storage rules for at least the last 18 months.

The matter of selling goods for freight and storage charges is covered by the statutes of the state in which delivery of the shipment is made and unless the provisions thereof are complied with the carrier will be liable for conversion.

### Routing—No Liability on Part of Carrier in Following Shipper's Instructions

**Pennsylvania.**—Question: Covering the period from April 20 to May 25, we had five cars of pig iron forwarded from East Jordan, Mich., to Williamsport, Pa., which both shippers and ourselves desired to route, East Jordan and Southern, M. C. to Buffalo, c|o Penna. to destination. The forwarding line, however, refused to accept cars with such routing specified for the reason, as they stated, that an embargo was in effect prohibiting the movement through Buffalo gateway and that they would accept them routed via East Jordan and Southern, P. M., c|o Penna. This latter routing carried a considerably higher rate than that which would have been assessed had the cars been allowed to travel through Buffalo gateway.

Inasmuch as the shippers specified a certain routing, based on the cheapest rate in effect between the points above mentioned and which routing was refused by the forwarding agent for reasons as noted, we would like you to advise whether reparation could be demanded covering the additional freight charges which we were obliged to pay as based on the difference in rates through Buffalo and Toledo gateways.

Answer: Assuming that you authorized the carriers to forward the shipments via the route over which the higher rate applied, upon being informed that the route through the Buffalo gateway was embargoed, your claim for refund of the difference between the rate applicable via the Buffalo gateway and that applicable via the route the shipments moved will not receive favorable consideration by the Interstate Commerce Commission. See Holgate Brothers Co. vs. Pa. R. R., 51 I. C. C. 515; S. C. Woolman & Co., Inc., vs. T. St. L. & W. R. R., 48 I. C. C. 441, and Graham County Lumber Co. vs. Southern Ry. Co. et al., 50 I. C. C. 231.

### Receipts for Order Bills of Lading

**New Jersey.**—Question: In your issue of The Traffic World, October 2, you answered our question as to receipts. It seems, however, that we have not made it quite clear enough. We pay all the freight charges by checks and have our vouchers in that manner.

The matter we wish to draw to your attention is with respect to the surrendering of order bills of lading on shipments which we indorse. It has been our custom to surrender these ladings and obtain a receipt from the carrier, as an acknowledgment that we have handed them the necessary documents. The question we would like defined is: After we have taken delivery of the shipment, is it necessary to still retain our receipts? We were thinking that at some future date the carrier might approach us and advise that we took delivery of a car and did not surrender the documents. If we had a receipt of the lading, that would place the responsibility upon the carrier. However, we do not wish to load ourselves up with a lot of old records and we are wondering how long it would be necessary, as a matter of good business, to retain these receipts.

Answer: Under the law, if a carrier delivers an order notify shipment without requiring the surrender of the bill of lading, the carrier is liable to the owner thereof for the value of the goods, but would have a right of action against the party to whom it delivered the goods without requiring the surrender of the bill of lading. The receipt you obtain from the carrier, upon surrender of the order bill of lading would protect you against a demand by the carrier for the value of any shipment which the carrier might allege had been delivered to you without surrender of the bill of lading, but is without other value, so far as we can see. In order to be of real value to you, it will be necessary for you to retain these receipts for the period of

time prescribed by the statute of limitations under your state, during which an action such as that referred to above, could be maintained by the carrier.

**Notification Under Demurrage and Storage Charges and Basis for Charges**

New York.—Question: We made a shipment from California of a car of merchandise, consigned to our order at New York City, and bill of lading showing destination to our customer at New York City.

On arrival of this car at destination, the railroad notified our customer, who was unable to take delivery within forty-eight hours. The car was held at the pier for the free time allowed and also for half the next day, it was then placed in storage. The railroad billed the storage warehouse with one day's storage charges, and the consignee had to pay it, the railroad claiming that even though the car was placed in storage by them at 12 o'clock, they nevertheless are entitled to collect the full day's dock storage. Our contention is that the railroad on account of charging one day's dock storage should not have placed this merchandise in storage until the following day. We also contend inasmuch as this was an order shipment consigned to our order we should have been notified and it should not have been placed in storage until we were given an opportunity to remove it. We were not notified that the consignee could not accept delivery within the free time and that car would go in storage.

We believe that on account of the railroad charging one day's dock storage and placing this car in the warehouse before this day expired, and on account of their not notifying us before the car was placed in storage that the railroad should waive storage charges, as our trucks called at the pier to take delivery of the car at 3 o'clock on the day that they charged dock storage, but car had been removed.

Kindly advise whether or not you believe we will be able to obtain a refund of additional expense caused by the railroad placing the above car in storage.

Answer: The person entitled to notice under an order notify bill of lading is the party specified therein to be notified.

Under the provisions of the carriers tariffs demurrage and storage charges are assessed for a fraction of a day and under the provisions of the carriers bill of lading property not removed within the period of free time may at the option of the carrier be removed and stored in a public or licensed warehouse instead of in the car, depot, warehouse or place of delivery of the carrier.

Therefore, inasmuch as the carrier could have stored the shipment immediately upon the expiration of the free time, you are not entitled to a refund of the charges for the time the carrier held the shipment after the expiration of free time and before it was placed in the public warehouse.

**Road Haul Rate Includes One Delivery Only**

Ohio.—Question: A car of sand originating in New Jersey, billed to a point in Ohio, routed Pennsylvania, B. & O. delivery.

The Pennsylvania hauls car to final destination and the consignee who is located on the B. & O. tracks being out of the material requests the Pennsylvania Company to place car on their team track in order that he can remove enough material to run his plant until the car can be delivered to B. & O. interchange and switched into the plant. The Pennsylvania Company renders a switching bill for this car, including a rate from their team track to interchange plus the rate from interchange to consignee's track, taking the stand that when car was placed on their team track one delivery was made so far as road haul movement was concerned. We contend that the only extra switching should be from the team track to the interchange track and as there was no extra switching involved by the B. & O., the Pennsylvania should pay the B. & O. the usual charge for delivering cars and absorb the charge out of the line haul rate. Will you kindly advise what in your opinion is the correct charge on a movement of this kind?

Answer: We are of the opinion that the position taken by the Pennsylvania Company is correct for the reason that the movement of the car from the team track of the Pennsylvania Co. to the plant located on the B. & O. R. R. is a separate and distinct shipment. The rate for the road haul includes only one delivery at destination and this delivery was made when the car was placed on the team track of the Pennsylvania Company.

**Damages—Measure of**

Iowa—Question: Will you be good enough to advise the liability of express companies in connection with shipments entirely lost in transit made on June 2, 1920, duplicated on August 1, 1920. The invoice value at time of shipment was $47.30 express charges $4.61 or a total on this basis of $51.91. The replacement cost at time of replacement was $60.61 which together with the express charges makes a total of $65.22. Kindly advise if the replacement value basis can be used in placing this claim.

Answer: We know of no decision of a state or federal court to the effect that the carrier must pay damages on the basis of the advanced price of the duplicate shipment for the loss or conversion of the original shipment, and it is our opinion that the amount of damages for which a carrier would be held liable in a suit for loss of a shipment would not include the difference between the value of the shipment lost and what must be paid at a later date for a shipment to replace the one lost, inasmuch as the purchase and transportation of a duplicate shipment is a transaction apart from and independent of the contract of carriage for the original shipment. The terms and conditions of the latter being those upon which the parties must stand. The substitution of another shipment was not in the contemplation of the shipper and carrier at the time of the making of the contract of carriage for the shipment and under the law only such damages as were within the contemplation of the parties to the contract of shipment may be recovered. The amount of damages is the market value of the shipment at destination on the date the shipment should have arrived in the usual course of transportation.

However, the uniform express receipt provides that unless a greater value is declared and charges for such greater value paid, the express company will not pay over $50.00 in case of loss or damage. Therefore, unless a value greater than $50.00 was declared, recovery will be limited to that amount.

## COAL PRODUCTION REPORT

*The Traffic World Washington Bureau*

The total output of soft coal the week of October 30 is estimated at 12,338,000 net tons by the Geological Survey, Department of the Interior, in its weekly report under date of November 6. This was an increase of 97,000 tons over the preceding week and except for one week in October, 1919, just before the coal strike, was the largest production since the armistice, November 11, 1918.

Production during the week of November 1 to 6 will show a marked decrease in output, the Survey says, because of election day and the observance of religious holidays. Loading on November 1 and 2 amounted to 35,829 cars and 16,587 cars, respectively, as against 43,331 and 38,455 on the corresponding days of the week preceding.

The 1920 output is 7,000,000 tons behind 1917, and nearly 42,000,000 tons behind 1918, but is over 51,000,000 tons ahead of 1919. The survey points out that it should be remembered that in 1918 production exceeded consumption, and provided for a net addition to consumers' stocks by the end of the year of 30,000,000 tons. In 1919 consumption exceeded production and there was a net draft on stocks of approximately 40,000,000 tons for the year.

An improvement in the car supply situation is noted by the Survey but the lack of cars for the week ending October 23 for the country as a whole caused a loss of time estimated at 20.8 per cent out of a total loss due to all causes of 31.9 per cent.

At the end of the week of October 30, 20,043,000 net tons of soft coal had been dumped at Lake Erie ports for transshipment since the beginning of the season, as against 24,369,000 in 1917, 27,317,000 in 1918, and 21,870,000 in 1919.

A decrease of 56,942 tons the week ended October 30 is noted in the dumpings of bituminous coal at Lake Erie ports, as compared with the figures for the previous week. The total dumped, as reported by the Ore & Coal Exchange, was 1,081,275 tons, consisting of 1,037,678 tons of cargo coal and 43,597 tons of vessel fuel. While this figure is lower than either of the two preceding weeks, it is 237,000 tons higher than that for the corresponding week in 1918.

The movement to tide, although smaller than in the week preceding, continued in volume during the week ended October 30. Cars dumped (as reported to the Geological Survey by the American Railroad Association) numbered 26,916. Dumpings decreased at all ports except Baltimore. In total cars dumped, the week ranked fifth since June 1.

According to reports furnished to the Geological Survey by the Tidewater Bituminous Coal Statistical Bureau, the coal handled over tidewater piers in the week ended October 31 amounted to 1,207,000 net tons. Although a decrease of 168,000 tons when compared with the preceding week, this was at a monthly rate of over 5,000,000 tons, a rate never attained before the summer of 1920. The decline was evenly distributed between the principal purposes for which tidewater coal is supplied. The coastwise shipments of cargo coal to New England were reported at 165,000 tons for the week, or at the rate of 706,000 tons per month. Exports decreased slightly, from 664,000 to 640,000 net tons.

The all-rail movement to New England for the first time since the week ended October 2 fell below the 5,000-car mark. Cars forwarded through the five rail gateways of Harlem River, Maybrook, Albany, Rotterdam, and Mechanicsville numbered 4,854. This is the lowest record since the week ended September 4, which showed 4,456 cars. Compared with the preceding week there was a decrease of 678 cars, or 12.2 per cent, while a comparison with 1919 shows an increase of 275 cars, or 6 per cent.

# The Open Forum

**A Department for the Discussion by Readers of THE TRAFFIC WORLD of Transportation Questions of Interest to Traffic Men**

## GOOD SERVICE COMMENDED

Editor The Traffic World:

We take great pleasure in advising you of the following: On October 15 we received a rush order of a carload of our product from Jena, La. We proceeded at once to make up this material, with the result that same was completed on October 19. We had a car in our yards and immediately loaded it with this order. This car was pulled on the morning of October 20 and left this station some time that day. We routed this car Elkhart and Big Four to Louisville, Ky., Illinois Central to Memphis, but did not route it further than Memphis. We are advised by our agent at Jena that this car arrived on November 1, at 7 a. m.

Can you beat that?

We see every once in a while in your weekly where the railroads are trying to attain an average of 30 miles per car a day. We say this record will bump many a mere average out of place, but this incident goes to show that when Congress returned the railroads to their rightful owners they did a wise thing, and, with such strides as this, railway service will again be what it was before Uncle Sam messed things up.

We are only too glad to commend the officials of the various companies handling this shipment, and we have done so.

Highway Iron Products Co.,
J. T. Wean, Traffic Manager.

Ligonier, Ind., Nov. 5, 1920.

## LIMITATION OF LIABILITY

Editor The Traffic World:

We have read with much interest the letter written to you by William P. Malott, traffic manager of the Walter A. Zelnicker Supply Company, page 827, of the October 30 issue of The Traffic World. We were interested most especially in the next to the last paragraph, in which he made reference to the limited liability of the carrier on shipments made on open-top cars.

We believe this is a matter on which concerted action should be taken by the shippers and the matter brought to the attention of the Interstate Commerce Commission.

The nature of our product is such that it is necessary for us to ship practically all of it on flat cars and on approximately 50 per cent of the shipments we have a claim for loss in transit of tools which are stolen from tool boxes. These tool boxes are secured in such a way that tools are more safe than if they were merely loaded in a box car with the doors sealed.

We have had a number of cases where the railroad companies have tried to turn down the claims on the strength of the above-mentioned clause on the back of bills of lading. They take the stand that they are not negligent unless we can prove that they are.

We do not feel that the shipper should stand a loss due to the inability of the carriers to furnish proper equipment and claim that this clause should be eliminated.

Hart-Parr Company,
H. F. Shider, Traffic Manager.

Charles City, Ia., Nov. 10, 1920.

## INCREASES ON FRUITS AND VEGETABLES

Editor The Traffic World:

We have read, on page 815 of your issue of October 30, the address of Mr. George H. Ingalls, speaking on increasing railroad efficiency, and we note his quotation from the Bureau of Railway Economics, wherein it states that the increase in freight rates between 1914 and 1920 has only been 67 per cent.

In the fruit and vegetable line—that is, the rates thereon—he could not be further from the facts because, on practically every commodity, the minimum has been raised several thousand pounds; for instance, onions from Texas have been raised from 24,000 pounds to 30,000 pounds for the minimum. On potatoes the minimum has been raised from 30,000 pounds to 36,000 pounds, and in many western localities to 45,000 pounds. On strawberries, in connection with commodity tariff from Maryland, Virginia, Delaware, Pennsylvania and New Jersey, the minimum has been raised from 12,000 pounds to 15,000 pounds and on peaches from 16,000 pounds to 18,000 pounds and the rates have practically been doubled. In substantiation of this, the rate from Lewiston, N. Y., on the New York Central, or Buffalo, N. Y., to Pittsburgh, Pa., in 1916 was 36.8 cents, or 38.6 cents per cwt. for first class; now the rate is 84.5 cents per cwt, or an increase of over 130 per cent, and we can show many cases where the rate has been increased that much and more; in fact, between the same points mentioned above the increase on fifth class has been from 12.1 cents per cwt. to 29.5 cents, or practically 150 per cent.

Now, if we have noted these increases in connection with our shipments, we surely do know that other lines have been given similar increases.

Now, not only have the rates been increased, but refrigeration rates have been increased from 30 to 80 per cent.

Iron City Produce Company,
P. J. Klingensmith, Traffic Manager.

Pittsburgh, Pa., Nov. 4, 1920.

## THE McCAULL-DINSMORE DECISION

Editor The Traffic World:

Reluctantly, I ask just space enough to reply to Mr. Fielden's article in your October 16 issue. Mr. Fielden says he is not writing as a defender of the carriers. Like Joseph in the story of Potiphar's wife, methinks he protests too much; obviously, he is not conversant with the history of the second Cummins amendment, and bases his theory purely on guesswork. The second amendment was never intended to modify the first except as to baggage, express, and those commodities ordinarily handled under declared valuations, such as ores, paintings, soap, household goods and a few others.

The first amendment was highly unsatisfactory to shippers by express and to travelers who checked baggage, and it was these two classes of railroad patrons that brought about the second amendment. I prepared the first draft of the last amendment and it was introduced by Senator Weeks (S. 538—64th Congress), who afterwards explained Senator Cummins wanted the credit of correcting a practice that was never contemplated when the first amendment was passed—namely, that of requiring the shipper by express or the traveler by train to declare the true value of his shipment or baggage under pain of violating Section 10 of the Act—and it was agreed that the senator from Iowa should have the privilege of doing this. The language of the first amendment dealing with packages—the contents of which were concealed from view—was a rather awkward attempt of a live stock representative to describe express shipments. The Cummins amendment was a live stock amendment pure and simple, which can be easily seen if one will note the clause relating to "loss, damage or delay while being loaded, unloaded or damaged in transit." The amendment was necessarily drawn to cover all traffic.

The first proviso limits the application of the reduced rate to cases where the Commission has by specific order authorized the application of rates based upon value. Rule 1 of the Official Classification and Section 3 of the bill of lading as published prior to the last change in Supplement 9 to the Consolidated Classification were both in contravention of the amendment, and Section 3 was in plain contravention of what the Commission held in ex parte No. 49, and it was admitted by one of the attorneys for the carriers during the bill of lading investigation that he had misinterpreted what the Commission said.

The Commission never issued an order authorizing Rule 1 of the classification; it never issued an order prescribing condition 3 of the bill of lading; it has consistently found against the carriers in every case where an attempt has been made to defend rates based on value which had not been specifically authorized by it subsequent to August 9, 1916; and any attempt to justify the carriers in applying rates, rules or conditions in the bill of lading in open defiance of the law is far from fair play to the shippers and does the carriers no real good. The carriers are well protected by competent counsel. Does Mr. Fielden think they are so disregardful of their legal rights as to modify their contract if there were any doubt as to the meaning of the second Cummins amendment?

The very language of the proviso indicates the value must be stated in writing and this is not complied with either by signing the illegal release required by the uniform bill of lading or by the shippers' acceptance of condition 3, which is general in its terms and does not express, as the law provides, a declaration of value by the shipper so as to limit liability of the carrier "to an amount not exceeding the value so declared."

Mr. Fielden's defense of Mr. Heath's interpretation is based on a complete ignoring of the classification provision for commodities, the rates on which are based on value such as express shipments, and shipments of ores, and other commodities such as he clearly outlines in the first possible construction he mentions. Mr. Fielden starts on the assumption that a released rate is a declaration of value. This is so fallacious his entire argument fails, and rule 1 being in contravention of the amendment in that it requires the acceptance of Section 3 of the conditions in the bill of lading, leaves him without any support. His argument as to the absence of invoices in cases of shipment of household goods is specious. What about the other commodities that in 1915-1916 had classification provisions fixing the rate based on the value—which in business transactions are covered by invoices?

What is the authority for the statement that the classification has the approval of the Commission? When did it approve it? The law does not say anything about the approval of the Commission; it says order. The Commission frequently gives its tentative approval to tariffs, but not by order.

Mr. Fielden seems to think that laws cannot or should not be changed. Hutchinson antedates the Cummins amendment, which restores much of the common law liability that had been set aside by the carriers through an ingenious use of the bill of lading contract and a clever combination of a classification rule which provided that all goods would be transported released unless the shipper refused to accept the uniform bill of lading.

Mr. Fielden seems unduly alarmed about the legality of the contracts if Section 3 fails. Why try to conjure up a Frankenstein monster? The matter is settled, and settled right; the carriers have corrected their bill of lading and if not satisfied can easily determine what the Supreme Court thinks the second Cummins amendment means.

I do not know Mr. Fielden; he may be a mere layman; but his article has an oder of railroad construction, which justifies one viewing it with suspicion.

W. H. Chandler,
Manager, Transportation Bureau, Boston Chamber of Commerce.
Boston, Mass., October 25, 1920.

## THE INDUSTRIAL TRAFFIC MAN

Editor The Traffic World:

I have been reading with much interest the comments on your editorial in The Traffic World of August 28, "The Industrial Traffic Man."

Since there is a growing need for men with traffic knowledge, why is it that traffic managers choose their subordinates from men with railroad experience, when they admit that this experience is more or less narrow and entangled in routine and red tape? There are plenty of ambitious young men who have recognized the opportunities in the industrial traffic field and are willing to spend time and money to gain a technical knowledge of traffic through one of the leading extension universities. This knowledge must be gained outside of business hours and is far broader than can be had in many of the railroad offices. This is the kind of man who has no time to sit and watch the hands of the clock go around. Which is the more likely man for promotion—the man who has deliberately chosen the traffic field for his line of work and is willing to spend his time in reading the leading authors on the subject, and the periodicals, or the man who luckily finds himself in demand because he has worked in a railroad office? It has been my experience in seeking a connection with an industrial traffic department that the deciding question is: "Have you railroad experience?"

Berkeley, Calif., Nov. 4, 1920. W. K. Webber.

Editor The Traffic World:

Your editorial, "The Industrial Traffic Man," in the August 28 issue and comments on the same in the October 9 issue, by J. A. MacLeod, and October 23 issue, by H. C. Walker, were read with much interest and raise the question in my mind just what the necessary requirements are to qualify for the position of traffic manager.

One would think that, with the qualifications these gentlemen have and with the shortage of traffic men claimed, they would find no trouble to secure a position.

Wish to say all railroad employes are not watching the clock, for I can cite instances where office help finish their work, working overtime to do so, without any compensation.

Also find railroad officials slow to recognize and encourage a man that is studying and trying to solve the traffic question.

One has to wait until Mr. Doe resigns, is promoted, or dies, to get a chance to advance, no matter how much ability one has or how much time he has given outside of his regular work to the study of traffic work.

Just as Mr. Walker says, how can a man make good until he has a trial?

Were all the men holding traffic positions experts at the start, or, for that matter, are all experts at any time; if not, how did they get their start?

Facing the same condition as these gentlemen above mentioned, would like some information regarding requirements that would at least enable one to get a trial.

No employer need sign a life contract and if applicant failed to make good he can be released, so why not give the men that studied or one that studies in addition to his railroad experience a preference over the man that knows but one side, and that the railroad side, and that training quite often embraces only one of the many subjects of traffic work.

Or is the supply of traffic men greater than the demand?

New London, O., Nov. 6, 1920. J. O. Richards.

## THE TRAFFIC DEPARTMENT

(Address of J. D. Hashagen, traffic manager, American Glue Company, before the Traffic Group, National Retail Dry Goods Association, Boston, November 10.)

It seems almost trite and commonplace to say that the chief factors of our economic life are production and distribution. Traffic concerns itself with the factor of distribution in that it smooths the way and facilitates its purpose.

The traffic department has nothing to offer but service. It does not buy, or sell, it is not interested in accounting nor in finance; it is a good deal like the ship's cook, in everybody's mess and nobody's watch. All it has is service, and that service to be worth while must be prompt, reliable and thorough. So that the traffic department is no place for the feeble-minded nor the indolent. It must keep abreast of the changes in law, rates, practice and methods or it will get hopelessly left behind. The first time someone applies the acid test and the department fails to respond truly that moment it losses the confidence of the principals.

It may be said that traffic derives its inspiration from the act to regulate commerce. This is not the time nor the place for an exhaustive analysis of the law. Indeed, if this were Monday morning and we could stay here until Saturday night and you had the patience and I the endurance we might accomplish that job.

We may at least consider a bit of its history and some of its principal provisions.

The act to regulate commerce derives its authority from that provision of the Constitution which says that Congress shall have power to regulate commerce between the states, with foreign nations and the Indian tribes. This is a very short declaration, but we are told by students of history and of constitutional law that it is one of the most important provisions of that historic document. We can realize and appreciate the force of this statement when we imagine the condition we would be confronted with if each state made its own rules, regulations, and so forth, under which and by which its commerce would be conducted with other states.

Until 1887 Congress did not exercise the power granted it by the Constitution. And even the first enactment was but a feeble step, amounting to little more than a declaration of principles. Since then there has been a number of amendments, all of which have enlarged upon the original enactment and have endowed the law with power and with usefulness.

In the enactment of 1920 Congress went a step further than any of its predecessors. At that time the country was anxious to unscramble the war-time conditions, which were very unpopular. There are men of vision who seem to see in every step which Congress has taken in these enactments a step nearer the inevitable government ownership. We are not quite prepared to accept that conclusion until we have given the present law a fair and square trial.

It may seem like talking the language of exaggeration to say that there are men who regard the act to regulate commerce as the greatest piece of constructive legislation ever placed upon the statute books of any nation, barring none. But when we come to consider the fact that the domestic commerce of the United States is the greatest in the world, that statement does not seem so far out of the way. If we accept that statement at its face value, then it follows that the regulatory body empowered to administer the law must be one of great dignity, responsibility and authority. Fortunately for us all the qualities of mind and of character of the men who have administered the law have always been such as to command the respect and the confidence of all parties subject to the law and guided by their decisions.

The effects produced by the law have been many. Perhaps the most important is the standardizing of practices of methods all over the country. All rules, regulations and practices must be published and, when so published and accepted by the Commission, have the full force and effect of law.

Therefore, it results that methods are uniform all over the country. It is not a matter of whim or humor that regulations and rules are enforced. If they are published they are law, equally binding upon all parties.

The knowledge of these rules and regulations is one of the most important equipments of the traffic department.

One of the most important collateral effects of the law has been the organization of a body known as the National Industrial Traffic League, an organization having about a thousand

members, located all over the country. The National Industrial Traffic League is a voluntary organization which devotes itself to just one thing, as its name indicates.

It represents the embodiment of the rights of the shipping public. The carriers have several organizations, abundant means and resources; and to meet this condition a well-organized, thoroughly efficient medium is necessary through which and by which the rights and needs of the public may be represented. There has grown in the minds of men who deal with large public questions a recognition of the rights of the public. It has been demonstrated in a number of industries, even in court decisions, and to the growth of this factor the Industrial Traffic League has contributed materially. I cannot leave this subject without pointing out its importance to us as a safeguard in times of trouble. The heart of the American people is undoubtedly sound when it is properly informed and when it has a fair opportunity to express itself. And you cannot fool them very much nor very long.

The National Industrial Traffic League by its determined stand for broad-gauge fairness after full and fair investigation has gained the confidence of the legislative committee of the Commission and of its increasing membership. While it does not undertake to settle individual cases, its advice and help are always available.

Another point in its favor is that loose and careless statements on the part of railroad executives do not go unchallenged. A little while ago a prominent railroad president made the statement that cars were in the possession of shippers and consignees thirty-seven per cent of the time. This statement was promptly challenged and when it came to a final show down the railroad president was simply repeating something of which he had no first-hand knowledge. In view of the importance and dignty of the position held by a railroad president, his statements receive unusual consideration. But if he cannot qualify with the facts then the public concludes that he either does not know what he is talking about or that his statements are devoid of good faith.

Recently one of our daily papers carried an editorial entitled "The New Freight Costs," wherein it showed that the Department of Railway Economics had put forth some figures bearing on this subject. It reported that the increased cost of carrying a suit of clothes from New York to Philadelphia was one and one-half cents. Other articles to and from different parts of the country were cited. This statement proved nothing; there is no way of checking the evidence and no one would take the trouble to prove or disprove the conclusion. Moreover, the formula and idea is an old one; it was first brought out by the late Mr. Albert Fink, at one time commissioner of the trunk line pool, which went out of existence in 1887. It occurs to me that a department of the government would do well to devote its time to something more useful than trying to prove a problem which is about as old as the question, "Which came first; the hen or the egg." The time has gone by when the people who watch transportation and are familiar with its workings can be fooled by such methods. The legislative records of the past two years show that the people of the country have dealt generously with their railroads. Now the railroads ought to get busy and develop their facilities and their service. They will need these facilities in the next few years. The tide of immigration is setting strongly toward these shores. In the past the immigrant has been considered almost exclusively from the standpoint of labor and has been overlooked from the standpoint of a consumer and a producer. Before the war the population of the country was increasing by immigration at the rate of over a million a year. Indeed, there were two years when the population increased by immigration alone over two and one-half million people, and if this rate of increase is renewed we can see where all of our facilities will be taxed to the utmost.

So I would give a piece of friendly advice to our big transportation men by saying to them "Get busy. You are going to have big problems to solve which must be solved in a big way."

Now, coming down to the provisions of the law which more nearly and directly affect our daily business activities.

All that the carrier can do to you or do for you are matters of public records and the requirements are equally binding upon both. The legal rate is the only rate applicable to the shipment. The carrier must collect no more and the shipper must pay no less. When we get a freight bill we should audit it and test it by every legal requirement. If it is overcharged present claim; if it is undercharged call attention to the fact. Overcharges when clearly established and properly supported can be collected promptly and very often adjusted upon the face of the bill. The same should be done with undercharges, so that the thing be cleaned up while fresh and new. In the handling of this proposition it would be well to bear in mind that old legal maxim, "He that demands equity must do equity." It is not necessary to stand so erect as to be in danger of falling over backward, but a reasonable recognition, in good faith, of the rights and duties imposed upon us by law will smooth the way over many difficulties. Moreover, it will invite and encourage a similar policy on the other side.

Now as to shipping and receiving goods. I have found in shipping that the better we do our part as to packing, marking and preparing documents, the better are our chances of having the goods go through in good order and without unnecessary delay.

Now as to receiving goods. It is equally important that we have a simple, direct and reliable method of receiving goods and making a record thereof. I suppose we all have a fine system, but I have seen these systems fall down so hard and so often that I do not have any faith in them.

I could probably occupy the whole evening telling you of instances where the receiving systems of a number of industries did not function. But it is not good form to make too much of these instances. The best I can say to you is to overhaul the receiving system every once in a while and see how you can improve its practices so that your records are clear and easily available and the goods move promptly to their respective departments.

If you have not already done so it seems to me that your traffic section might accomplish a useful thing to consider and adopt a uniform system of receiving and recording—standard forms and standard methods. The advantages of this are so apparent that I will not take the time to point them out. But inasmuch as the railroads have standard forms and standard methods it would be well for shippers and consignees to study this question and profit by the study.

I now come to the subject of claims. I sometimes think that if there were no claims the traffic department would have no job. And they are a sore subject to both shippers and carriers. In a general way it may be said that if your evidence is clear, direct and complete, the claim stands a one hundred per cent chance of collection. The law does not permit carriers to pay claims as a matter of policy, but this does not mean that the carriers should stand so erect as to be in danger of falling backward.

In case of claims for damages avoid the words "Received in bad order" because they are meaningless. If the package is broken describe the nature of the break; if it shows signs of being wet, say so, but avoid that "bad order."

These things seem to be so obvious as to appear commonplace, but even a commonplace thing has its importance in our business life and needs to be watched and considered. Methods and practices are changing all the time and we can make our business more measurably smoother if we are alert to keep abreast of the progress.

## Personal Notes

John A. Streyer of Macon, Ga., who began his railroad career thirty years ago as a messenger boy for the Georgia Southern & Florida Railroad, has been appointed traffic manager in Southern Classification territory for 201 railroads in the American Short Line Railway Association.

Frank Hill Frederick, assistant traffic manager of Swift & Co., died at the Lakota Hotel November 10, after an illness that had lasted some time.

S. S. O'Brien is appointed traveling freight agent of the Norfolk & Western Railway Company, with office at New York, N. Y.

J. E. Sunderland is appointed traveling freight and passenger agent of the Wabash Railway Company, with headquarters in San Francisco.

The Wheeling & Lake Erie Railway Company and the Lorain & West Virginia Railway Company announce that the office of traffic manager is abolished and, until further notice, the traffic department organization will be as follows: Edward Briggs, general freight agent, in charge of freight traffic; T. J. McRoberts, general passenger agent, in charge of passenger traffic.

E. R. Oliver is appointed freight traffic manager of the Southern Railway System, Lines West, at Cincinnati, succeeding G. P. Biles, who died.

George E. Wright is appointed commercial agent of the Central of Georgia Railway Company, with headquarters at Birmingham, Ala., vice E. B. Lewis, resigned.

E. W. Goslee is appointed traveling freight and passenger agent of the El Paso & Southwestern System and Morenci Southern Railway Company, with headquarters in Chicago.

The Boston & Maine Railroad announces the opening on November 15 of a general agency in Chicago, in charge of James N. Gall, general western agent.

Elmer E. Young has been appointed traffic manager of the Prairie Oil & Gas Company, Independence, Kan. Mr. Young has had sixteen years' experience in railroading. His first position was with the C. M. & St. P. Railroad. For six years he was affiliated with the Rock Island at Little Rock, Ark., leaving there to take a position as traffic manager of the Gould Southwestern

Railway. After a year in this capacity he assisted Mr. Gregory, rate expert of the Arkansas commission, in compiling the Arkansas Railroad Commission Tariff No. 5. On completion of this work he accepted an appointment as general agent for the Kansas City & Memphis Railway, at Siloam Springs, Ark., where he remained until his connection with the Prairie Oil & Gas Company three years ago.

On recommendation of H. E. Manghum, in charge of the division of regulation of the United States Shipping Board, Elmer E. Rogers, examiner, has been appointed chief clerk of the division. Mr. Rogers has been with the Shipping Board for three years and was formerly chief clerk of the division of contracts.

## DOINGS OF THE TRAFFIC CLUBS

The Traffic Club of Chicago will, the evening of Tuesday, November 23, hold the first of a series of "get together traffic discussions." The plan is to select a subject for each of these meetings to be discussed by a leader on the side of the railroads and one on the side of the shippers, followed by general discussion. The object is to bring about better understanding of traffic problems and to encourage the friendly exchange of ideas in a co-operative spirit. The discussions are meant to be valuable, not only to the younger traffic men, but to the more experienced as well. The subject of the first meeting will be "car spotting charges." C. B. Heinemann, who is chairman of the special committee of the National Industrial Traffic League appointed to deal with the carriers on this subject, will lead for the shippers. A railroad man acquainted with the plans of the carriers and the arguments behind them will lead for the carriers. Henry A. Palmer, editor of The Traffic World, will preside. W. H. Wharton is chairman of the committee in charge of these meetings. The idea of holding them was his.

The Traffic Club of Wichita held its annual election October 7, after its annual dinner, and elected the following officers: G. P. Nissen, president; D. L. Mullen, first vice-president; J. H. Wilcox, second vice-president; H. G. Watts, secretary; E. O. Moore, treasurer; W. P. Huston, H. L. Resing, P. Lewis, directors, two-year term.

## SHIPPING BOARD APPOINTMENTS

*The Traffic World Washington Bureau*

Uncertainty still obtained this week with respect to the appointment of the new Shipping Board of seven members by President Wilson. There was no confirmation of a second press report November 6 to the effect that the President had completed the list of recess appointees. Five members of the board have been appointed, the report said, naming Admiral Benson, present chairman; John A. Donald, present member of the board; John W. Shackleford of Seattle, Joseph N. Teal of Portland, Ore., and Frederick I. Thompson of Mobile, Ala.

It is commonly reported in Washington that the Republicans will hold up action on all appointments that must be confirmed by the Senate until after March 4, 1921, when the new administration goes into office. If this plan is carried out it will affect Interstate Commerce Commission appointments as well as Shipping Board appointments. There is nothing to prevent the President, however, making recess appointments, but those who accept will do so on the chance of not being confirmed later by the Senate. If no confirmations are made by the Senate, President-elect Harding will fill the vacancies after March 4. Those who accept places on the Shipping Board at this time will be in the same position that Commissioners Ford and Potter are in on the Interstate Commerce Commission.

## WOOLLEY JUST GOING, ANYHOW

*The Traffic World Washington Bureau*

Commissioner Woolley, November 9, issued the following statement through the office of Secretary McGinty:

"Upon my return this morning from Tampa, Fla., where I have been holding hearings in a case before the Interstate Commerce Commission, my attention was called to several news articles, which have appeared in the past few days, to the effect that if I am reappointed January 1, the Senate will refuse to confirm my nomination, and that Representative Esch, chairman of the house committee on interstate and foreign commerce, for whose ability and character I have great regard, will be named by President Harding to succeed me. An admirable choice, indeed.

"Nearly a year ago I asked Secretary Tumulty to notify President Wilson that I was seriously thinking of resigning from the Commission in order to enter private life to my distinct financial advantage, and that, even though I might serve out my term, owing to the pressure of most important work which the Commission had in hand, I did not wish to be reappointed. I also informed my colleagues to like effect. So what the new President may do in the matter of selecting my successor is of no personal interest to me. I suspect, however, that the South will be interested. Of the eleven Commissioners, only two are from that section—Mr. McChord, of Kentucky, and myself, of Virginia. The Republicans of the southern states are justly proud of having broken the so-called solid South by carrying Tennessee and Oklahoma and if part of their reward is to be reduced representation on so important a commission, they will undoubtedly be grateful for not being kept in suspense. My belief is, however, that the person who has been so industriously spreading this story is as ignorant of the plans of the President-elect as he seemingly is of my own."

## GRAY ON NEW RAILROAD ERA

President Carl R. Gray, of the Union Pacific System, made an address at the luncheon of the Traffic Club of Chicago, November 9, at the Sherman Hotel, on the subject, "The New Railroad Era." He had a large audience composed of the leading traffic men of the city, both industrial and railroad, and several railroad presidents and other higher officials not immediately connected with the traffic departments.

Mr. Gray traced the history of transportation regulation from 1887, when the first interstate commerce law was enacted, until the present, with the railroads operating under the transportation act of 1920. Speaking of the taking over of the railroads by the government, he said that just about the time the European war began, the railroads in this country had come to the beginning of the end and that any such thing as railroad credit disappeared between that time and the time when the United States itself entered the war. A railroad, he said, was not supposed to earn money enough to pay its debts like an ordinary business, and the law clearly anticipated that improvements and extensions should become a part of the permanent burden of the railroads and be paid by successive generations. So, for a year and a half or two years before this country entered the war, he said, there was no new money obtainable at reasonable rates of interest and, of course, even with those who were able to obtain money, materials were not available because of the necessity for the same kind of materials for war purposes. Therefore, there was a period beginning shortly preceding the beginning of federal control and existing throughout such control when there was little expansion in railroad facilities. He did not criticise anybody for that because, he said, it was a necessary concomitant of war; but the railroads found themselves at the end of federal control with fewer vehicles for the handling of freight than when federal control began.

He said that for at least two years preceding federal control and during the period of federal control there was no such thing as railroad credit. While it was a controversial question, it had always been his conviction that the prime reason for the taking over of the railroads by the government was a financial one. The government, he said, was going to launch onto the greatest borrowing campaign that had ever been known. The railroads had maturing obligations amounting to over a billion of dollars and the government could not afford to have in the market and bidding against them for money the railroads, whose needs would have compelled them to pay any rate of interest that would have brought the money. The government, then, in considering the return of the railroads to their owners, was confronted with this frozen credit situation and it was solved by the transportation act of 1920, which, he said, in his judgment, was one of the greatest experiments in political economy that had ever been known.

He then explained the provisions of the transportation act under which the Interstate Commerce Commission must fix rates so that in the country as a whole or in territorial groups the railroads shall earn 5½ per cent on their physical value. He pointed out that this physical value represented no good will and none of the going value of a business built up after years of trial and sometimes of loss. He pointed out that there was nothing guaranteed to any individual railroad. In fact, Congress realized that there were railroads in given groups that could not earn the 5½ per cent provided and that other railroads would earn more than the 5½ per cent. So Congress took care of that situation by setting aside the next one- half of one per cent to be devoted to so-called unproductive improvements, and then, above this 6 per cent, the government would retain or reclaim one-half. He explained that one-half of all above 6 per cent which the fortunate railroad was allowed to retain would have to be paid into a contingent fund until it reached an amount equal to 5 per cent on the physical valuation of the railroad property, and that then it might be drawn on to pay the regular dividends in a lean year, but must, as soon as possible, be built up again to the 5 per cent. The Government provided that the Commission might loan this money, which it had recovered from the railroads, to the railroads for any legitimate purpose, but he thought it singular that the government provided that when it lent this money it would charge the railroads 6 per cent, though the railroads were limited to earnings of 5½ per cent.

Whether the railroads, thus limited to 5½ per cent on their physical valuation and on their improvements, as made, could build and expand was one of the problems to be solved.

A good many of the railroads, he said, had already incurred

large investments in equipment, not necessarily because they would prove of value, but because there was public need of them; and other railroads were now considering extensions to their property, not because the 5½ per cent looked attractive, but because they realized that they were a part of the body politic and that without a railroad in a particular territory the country did not grow.

The only thing that had been guaranteed the railroads, he said, was an opportunity to earn a part of the 5½ per cent, but to no railroad was guaranteed any part of this amount. Neither was there guaranteed to any railroad that there would not be an error on the part of the government in underestimating the returns.

For the first time, he said, the rate had become something more than a mere commercial and economic charge. While under the law the rate must be reasonable, it was not the rate or the reasonableness of that rate that the law was aimed at. It was a return on the railroads commensurate to 5½ per cent. This was done, he said, because of the fundamental necessity that all the people in the country be served. Where he had heard one complaint in the last ten years against the unreasonableness of rates, he said, he had heard twenty of inadequate service. Every indication, he said, was that the prime object of the new legislation was to provide for service on the part of the railroads.

He said that if nothing else had come out of the new law but the one feature having to do with the cause of watered stock, the thing would still be valuable. With the income of every railroad limited to a percentage of its physical value, it no longer, he said, made any difference whether it had stocks and bonds of five times its physical value or whether the value of its stocks and bonds was less than its physical value. He said it was likely that few railroads were overcapitalized and it was going to be found that the great majority of railroads were worth more than their capitalization.

He said that in the new transportation act the railroads had the first constructive and sympathetic law from their angle that they had ever seen. The railroads were functioning now, he said, as they had not functioned for years and in the last twelve weeks they had handled a record business.

The law had done another thing, he said, which was to say to railroad labor that it differed from other labor in that it was concerned only in the moving of public business and that there must be no interruption of traffic. There were no teeth in this part of the law, he said, but he believed the public had made up its mind that there was to be no interruption in this industry and that if teeth were needed they would be provided by an amendment to the transportation act. The public had given the largest rate increase and the largest wage increase the world had ever known and now it was not going to be satisfied with anything but complete and continuous functioning by the railroads.

The railroad problem would cease to be a problem when it was understood, he said. There was no difficulty that ever came up between the shipper, on the one hand, and the railroad man, on the other, that was not capable of adjustment if the two parties would sit down across the table from each other.

## HANDLING OF FREIGHT

*The Traffic World Washington Bureau*

The daily car mileage in August—27.4—was the greatest since the month of May, 1917, and the tons per car—29.8—were the greatest of any month since December, 1918, according to a statement on freight car performance for the month of August issued by the Bureau of Railway Economics. The statistics relate to Class 1 roads. The operations for August covered 231,587 miles of line.

The per cent of loaded car miles for August was 68.2 as compared with 67.8 in July. In August, 1919, the per cent was 70.4. The per cent of unserviceable cars for August was 7.1 as compared with 7.2 in July, and 9.2 in August of 1919.

The net ton-miles in August amounted to 42,706,835,000 as against 40,232,000,000 in July, which the Interstate Commerce Commission in its review of operations for July and the seven months said "tops all records for any one month's operation since April, 1916, and probably in the history of the railroads." August, therefore, holds the record for net ton-miles of any month in railroad history.

In the New England region the net ton-miles for August amounted to 1,107,355,000; Great Lakes region, 7,949,392,000; Ohio-Indiana-Allegheny region, 10,352,575,000; Pocahontas region, 2,631,863,000; Southern region, 5,025,076,000; Northwestern region, 5,495,176,000; Central Western region, 7,072,486,000; Southwestern region, 3,072,912,000.

The report shows the total number of freight cars on line daily in August was 2,475,262 and that the number of unserviceable cars was 176,866. Unserviceable cars include those in or awaiting shop and all "bad order" cars.

The Association of Railway Executives issued the following statement November 10:

"During the twelve weeks from August 1 to October 23, inclusive, cars loaded with revenue freight totaled 11,654,567, which is believed to have been without parallel in American railroad history. This was an increase over the corresponding period in 1919 of 362,902 cars and 223,100 over the same weeks in 1918. During the same period this year 2,513,138 cars were loaded with commercial coal, as compared with 2,412,249 cars for the same weeks last year, or an increase of 100,889 cars.

"A decrease in the car shortage, which represents the number of cars ordered by shippers which the railroads are unable to furnish promptly, amounting to 3,552 cars, was also shown for the week which ended on October 23. The average daily shortage for the week was 65,965, as compared with 69,517 cars for the previous week, and 147,309 on September 1, when the peak was reached for this year.

"The car shortage for the week ending October 29 amounted to 55,412 cars."

The railroads of the country in the week ending October 23 loaded 1,010,961 cars of commercial freight, thereby exceeding the performance of the week of October 9, when 1,009,787 cars were loaded, according to the weekly report of the car service division of the American Railway Association on revenue freight loaded. The week of October 9 exceeded all other weeks this year for the number of cars loaded. According to the records of the division there was only one other week in which the loading exceeded 1,009,787 cars and that was in 1919 when a record of 1,011,422 was made.

For the week ending October 23 in 1919, a total of 977,051 cars were loaded and in the corresponding week of 1918, 920,111 cars.

In the week ending October 23 this year increases in the number of cars loaded were shown in the loading of coke, forest products, ore, merchandise, L. C. L., and decreases in the loading of grain and grain products, live stock, coal and miscellaneous, as compared with the corresponding week in 1919.

The loading of commodities by districts for the week ending October 23 and the corresponding week of 1919 follows:

Eastern district: Grain and grain products, 5,872 and 6,706; live stock, 2,489 and 3,811; coal, 59,563 and 60,784; coke, 3,428 and 3,071; forest products, 7,509 and 7,774; ore, 10,799 and 5,297; merchandise, L. C. L., 49,196 and 26,670; miscellaneous, 107,593 and 126,572; total, 1920, 246,809; 1919, 240,685; 1918, 224,962.

Allegheny district: Grain and grain products, 2,329 and 3,226; live stock, 3,720 and 3,960; coal, 72,552 and 69,962; coke, 6,388 and 3,876; forest products, 4,031 and 4,375; ore, 14,551 and 8,675; merchandise, L. C. L., 39,802 and 43,112; miscellaneous, 71,079 and 69,565; total, 1920, 214,452; 1919, 206,751; 1918, 205,659.

Pocahontas district: Grain and grain products, 82 and 217; live stock, 356 and 434; coal, 23,842 and 24,393; coke, 709 and 665; forest products, 1,824 and 1,851; ore, 209 and 261; merchandise, L. C. L., 2,753 and 140; miscellaneous, 7,434 and 9,846; total, 1920, 37,209; 1919, 37,807; 1918, 36,477.

Southern district: Grain and grain products, 2,936 and 3,117; live stock, 2,163 and 3,050; coal, 28,627 and 29,766; coke, 3,881 and 2,506; forest products, 16,891 and 16,091; ore, 2,966 and 2,415; merchandise, L. C. L., 38,467 and 20,401; miscellaneous, 37,782 and 55,951; total, 1920, 133,713; 1919, 133,297; 1918, 114,306.

Northwestern district: Grain and grain products, 13,513 and 14,744; live stock, 10,328 and 10,361; coal, 12,050 and 13,599; coke, 1,864 and 676; forest products, 15,322 and 15,778; ore, 41,676 and 26,354; merchandise, L. C. L., 29,236 and 23,068; miscellaneous, 47,107 and 46,556; total, 1920, 171,096; 1919, 151,136; 1918, 161,436.

Central Western district: Grain and grain products, 10,303 and 11,682; live stock, 12,923 and 16,295; coal, 25,194 and 25,683; coke, 475 and 419; forest products, 5,703 and 5,454; ore, 2,738 and 2,247; merchandise, L. C. L., 31,098 and 24,095; miscellaneous, 49,010 and 58,144; total, 1920, 137,444; 1919, 144,019; 1918, 123,033.

Southwestern district: Grain and grain products, 3,851 and 4,329; live stock, 2,632 and 3,665; coal, 7,215 and 7,785; coke, 153 and 131; forest products, 7,540 and 5,684; ore, 243 and 331; merchandise, L. C. L., 17,632 and 13,001; miscellaneous, 30,972 and 28,430; total, 1920, 70,238; 1919, 63,356; 1918, 54,238.

Total loading by commodities on all roads for week ending October 23 and corresponding week of 1919: Grain and grain products, 38,886 and 44,021; live stock, 34,971 and 41,576; coal, 229,043 and 231,972; coke, 16,898 and 11,344; forest products, 58,820 and 57,007; ore, 73,182 and 45,580; merchandise, L. C. L., 208,184 and 150,487; miscellaneous, 350,977 and 395,065; total, 1920, 1,010,951; 1919, 977,051; 1918, 920,111.

The division in an explanatory note says the merchandise and miscellaneous figures should be added to get fair comparisons, as L. C. L. loading figures for 1920 and 1919 are not comparable as some roads are not able to separate their L. C. L. freight and miscellaneous for 1919.

The American Railway Association, from information compiled by its car service division, issues the following summary of car surplusages and deferred car requisitions indicating an average for the period dated October 8 to October 15, inclusive:

Total Surplusages—
Average for period, October 8 to October 15, 1920............ 2,188
Average for period, September 8 to September 15, 1920...... 5,045

It will be noted that there is a decrease of 2,857 cars in the total average over the period September 8 to September 15, 1920.

Total Deferred Car Requisitions—
Average for period October 8 to October 15, 1920............ 69,517
Average for period September 8 to September 15, 1920...... 96,114

The total deferred car requisitions shows a decrease of 26,597 cars over the period September 8 to September 15, 1920.

The average figures by classes of cars for the period October 8 to October 15 are as follows:

| Classes. | Surplusages. | Deferred car requisitions. |
|---|---|---|
| Box | 1,101 | 31,324 |
| Flat | 16 | 7,803 |
| Gondola | 446 | 26,494 |
| Miscellaneous | 625 | 3,896 |
| Total | 2,188 | 69,517 |

**Following is a summary indicating an average for the period October 16 to October 23, inclusive:**

Total Surplusages—
Average for period, October 16 to October 23, 1920........... 2,630
Average for period, September 16 to September 23, 1920.... 4,965
It will be noted that there is a decrease of 2,335 cars in the total average over the period September 16 to September 23, 1920.

Total Deferred Car Requisitions—
Average for period, October 16 to October 23, 1920........... 65,965
Average for period, September 16 to September 23, 1920..... 39,947
The total deferred car requisitions shows a decrease of 23,982 cars over the period September 16 to September 23, 1920.
The average figures by classes of cars for the period October 16 to October 23 as as follows:

| Classes. | Surplusages. | Deferred car requisitions. |
|---|---|---|
| Box | 1,157 | 27,844 |
| Flat | 59 | 7,149 |
| Gondola | 626 | 26,933 |
| Miscellaneous | 788 | 4,039 |
| Total | 2,630 | 65,965 |

The report of the car service division of the American Railway Association for the week ending October 30 on revenue freight loading shows that a total of 973,120 cars were loaded as against a total of 1,010,961 cars the preceding week. The loadings in the corresponding weeks of 1919 and 1918 were 935,479 and 892,392, respectively.

As compared with 1919, there was an increase in the week ending October 30 in the loading of coal, coke, forest products and merchandise, L. C. L., and a decrease in the loading of grain and grain products, live stock and miscellaneous.

### FREIGHT TRAIN MILE COSTS

The average cost of running a freight train one mile, as indicated by a comparison of the principal items of expense selected by the Interstate Commerce Commission for statistical purposes, was 23.2 per cent greater in July this year than in July, 1919. The total of the selected accounts was $1.89 per mile this year and $1.54 last year, an increase of 35 cents. In January the cost was $1.85 and in February, the last month of government operation of the railroads, it was $1.91, showing that the increase occurred before the return of the railroads, and that there has been a small decrease since. In March, the first month after the return of the roads to private management, the cost was $1.79, in April it was $1.87, in May, $1.78, in June, $1.87, and in July, $1.89.

## PAYMENT OF GUARANTY TO CARRIERS

Hope that the government may find a way for making immediate payment to the railroads of funds due them under the guaranty provisions of the transportation act is expressed by the board of directors of the Chamber of Commerce of the United States. The money is urgently needed by the roads, the board declares in a resolution made public November 11, that there may be no delay in adding equipment necessary for adequate transportation service.

In its bulletin the chamber sets forth in some detail the situation brought about by the decision of the Comptroller of the Treasury that the Secretary of the Treasury is not authorized to make payments to the roads under the guaranty for March-August, 1920, until the Interstate Commerce Commission has ascertained and certified to the Treasury the entire amounts necessary to make good the guaranty to each railroad. The position of the Comptroller is that the Treasury cannot make partial payments on account, but must wait for a final accounting from each railroad and make a single payment in final settlement.

"The total amount of the operating deficit for all roads during the guaranty period," says the chamber's railroad committee, "was about $634,000,000. Of this amount approximately $234,000,000 has already been paid to the roads in the form of advances requested before September 1, 1920. The railroads are, however, very much in need of the $400,000,000 still due. Some of them are facing strikes because of their inability to pay the wages due their employes under the retroactive provisions of the recent wage decision of the U. S. Railroad Labor Board. Others are unable to secure the necessary funds to provide any new facilities and equipment or even to maintain their present facilities and equipment. None of them can expect that their credit will be fully restored at once by the new rate schedule which went into effect August 26, 1920.

"It is therefore of great importance to the financial stability of the roads, and is obviously in the public interest, for government officials to find some way to pay promptly the amounts due to the railroads from the government.

"The transportation act provides that for a period of six months after the termination of federal control the United States shall guarantee to every railroad desiring to accept this provision a net railway operating income proportional to the standard return paid to the railroads by the government during the period of federal operation. The act also provides that:

> The Interstate Commerce Commission shall as soon as practicable after the expiration of the guaranty period ascertain and certify to the Secretary of the Treasury the several amounts necessary to make good the foregoing guaranty to each carrier. The Secretary of the Treasury is hereby authorized and directed thereupon to draw warrants in favor of each such carrier upon the treasury of the United States for the amount shown in such certificate as necessary to make good such guaranty. An amount sufficient to pay such warrants is hereby appropriated out of any money in the treasury not otherwise appropriated.

"On September 27, 1920, the Secretary of the Treasury asked the Comptroller for an opinion in regard to whether the Secretary is authorized under the provision of section 209 of the act to make payments on certain certificates submitted to the Secretary by the Interstate Commerce Commission certifying that certain amounts were due to certain carriers, subject to the proviso that the Commission may hereafter certify to the Secretary of the Treasury such additional amounts as may be necessary to make good to the carrier the guaranty of a standard return for the period of six months after the termination of federal control.

"The Comptroller advised the Secretary of the Treasury that the payments in question can be made 'only after a carrier has submitted its entire claim under the guaranty and the Commission has ascertained the amount due thereon.' He also says: 'I can find nothing in the law to justify a conclusion to the effect that paragraph (g) authorized any payment to a carrier before the amount due under the guaranty has been ascertained by the Commission;' and he likewise expressed the view that 'it is quite clear that the law does not give to the carrier the right to file its claim piecemeal and to have certificates for payment made by the Commission without limit as to number or time.'

"The Interstate Commerce Commission interprets the law to mean that it is the duty of the Commission to ascertain at the earliest possible date definite amounts that are due to the railroads under the guaranty provisions of the act and to certify these amounts to the Secretary of the Treasury for immediate payments to the railroads. This the Commission has done, but, on the advice of the Comptroller of the Treasury, the Secretary of the Treasury has refused to make partial payments on account of amounts due as recommended by the Commission and has asked that each road be required to make a final accounting before any further payments are made, and that the Commission present a single certificate for each road that will serve as a basis for a single warrant making final settlement of the amount due to that road under the guaranty provisions of the act.

"It is thus evident that the Comptroller of the Treasury, who is the law officer of the Treasury Department, interprets the guaranty provisions of the transportation act in one way, and the Interstate Commerce Commission interprets them in another; and that if the amounts due to the railroads are to be paid promptly these two opinions must be reconciled on some basis that will permit partial payments. In an order dated October 18, 1920, the Commission outlined the form to be used by carriers in presenting their claims under the guaranty provisions of the act, and ordered each carrier to file its claim on this form on or before January 1, 1921.

"After the claims are filed it will be necessary for the Commission to review and adjust the amounts in accordance with the provisions of the act before the Commission can ascertain the total amounts due and certify them to the Secretary of the Treasury for final payment. In some cases this process may require many months, or perhaps years, and meantime large sums of money which the government agreed to pay to the railroads to enable them to take care of their current expenditures during the guaranty period will be kept from them."

### FREIGHT CLAIM PREVENTION CONGRESS

H. C. Barlow, head of the traffic department of the Chicago Association of Commerce, will be on the program representing shippers at the freight claim prevention congress to be held by the carriers in Chicago, November 15 and 16. President Aishton, of the American Railway Association, will speak first, on the part of the carriers. Mr. Barlow will follow him. The matter will then be taken in the regular order of the program.

## OPEN TOP CARS RELEASED

*The Traffic World Washington Bureau*

About 25,000 open-top cars were added, on November 6, to the stock of that kind of equipment that may be used for traffic other than the hauling of coal. That increase in the number of open-top cars that may be used for transporting road and building materials was caused by the issuance by the Commission, of an amendment to Service Order No. 20, effective at midnight, November 7.

That amendment changes the description of coal cars subject to the order confining coal cars to the carriage of coal, by limiting the description to cars being 42 or more inches in height. The Commission's first description of a coal car was one having sides of 36 inches or more in height. On representation of shippers of other materials requiring the use of open-top equipment, that first description was changed, in September, to 38 inches and now the height limit is raised to 42

The first change released 15,000 cars and the chief purpose in making that change was to allow cars for the shipment of structural steel for building and tubular goods for use in the drilling of oil wells and getting the oil to the refineries.

The order effective at midnight on November 7 is as follows:

It is ordered, That the proviso in Service Order No. 20, entered Oct. 8, 1920, which reads

"And provided further, that the phrase 'coal cars' as used in this order shall not include or embrace flat bottom gondola cars with sides less than 38 inches in height, inside measurement, or cars equipped with racks, or cars which, on June 19, 1920, had been definitely retired from service for the transportation of coal and stenciled or tagged for other service."

be, and it is hereby, amended, effective at midnight Nov. 7, 1920, to read:

"And provided further, that the phrase 'coal cars' as used in this order shall not include or embrace gondola cars with solid (fixed) sides and solid (fixed) flat bottoms, having sides 42 inches or less in height, inside measurement, or cars equipped with racks, or cars which on June 19, 1920, had been definitely retired from service for the transportation of coal and stenciled or tagged for other service."

And it is further ordered, That copies of this order be served upon all common carriers by railroad described in Service Order No. 20, and that notice of this order be given to the general public by depositing a copy hereof in the office of the secretary of the Commission at Washington, D. C.

## TRANSPORTATION OF COAL

*The Traffic World Washington Bureau*

The car service division of the American Railway Association has given out the following statement:

"The last week in October was the fourth consecutive week in which the railroads have furnished sufficient transportation for a production of over 12,000,000 tons of bituminous coal, according to reports compiled by the car service division of the American Railway Association.

"The total production for October has been exceeded but once, when efforts were concentrated on obtaining the greatest possible output just before the miners' strike which began on November 1.

"During the week ending October 23, the railroads made a new record for the year in the number of cars loaded with coal. The total for all kinds of coal, including railroad fuel coal, was 258,402, an increase of nearly 4,000 cars over the total for the previous week, which had also made a record for 1920. For the first three full weeks of October this year the total loading of coal was 766,854 cars, or 8,233 cars less than for the corresponding period of 1919, but comparisons are being made with the heaviest coal loading month on record."

## CONTROL OF COAL INDUSTRY

*The Traffic World Washington Bureau*

A threat by Senators Calder of New York and Edge of New Jersey that, unless there is a marked reduction in the price of coal before December 6, when Congress reassembles, they will introduce legislation looking to drastic government control over the coal industry, attracted less attention in Washington than the collateral declaration made by them that "the wrong-doing (by the coal industry) has been admitted by D. B. Wentz, representing the National Coal Association; by Commissioner Clyde B. Aitchison of the Interstate Commerce Commission, and Daniel Willard, representing the railroads." That declaration by the senators attracted attention because of the mention of Commissioner Aitchison as "admitting" the wrong-doing of the coal industry.

Commissioner Aitchison, observing the practice of commissioners not to comment on matters before that body, except in formal reports or orders, refused to say anything on the subject. He appeared as a witness before the reconstruction committee of which Senators Calder and Edge are members, to tell what had been done by the Commission, the railroads and the National Coal Association to relieve the situation by ordering the conservation and distribution of coal cars. The reconstruction committee was interested in the coal car orders, apparently, because of the anxiety of some members of it to obtain a larger number of coal cars for the transportation of road and building materials.

What Aitchison said at that hearing was intended, not as an admission that the coal industry had been guilty of wrong-doing, but as a recital of the things done by the Commission, first to assure the use of coal cars for the hauling of coal, and, second, the hauling of coal so as to assure a supply of fuel for New England and the Northwest. At the time he testified, in August, there was a general priority in behalf of public utilities on request of the delivering carrier. Permits were also being issued for the use of coal cars for use in hauling other commodities.

In the middle of October, on account of the abuses which the Commission found had been practiced by public utilities and holders of permits, the priority in favor of utilities and all permits for the use of coal cars for traffic other than coal, were cancelled. No priority for utilities exists now and only a few permits have been issued allowing the use of coal cars for other than the transportation of coal.

President Wilson's secretary, J. P. Tumulty, was brought into the record of the Calder committee by a witness whose language caused one New York newspaper to write a headline saying: "Says Tumulty Told I. C. C. What to Do During Coal Crisis—Was Real Director of Priority Shipments, Says Advice to Calder Committee."

Tumulty felt constrained, on account of those headlines, to give out a statement, on November 5, saying there never was any politics at any time in the matter of priority shipments of coal; also that he had consulted with Assistant Director-General Alvord of the Railroad Administration "with reference to the handling of the difficult situation," and that he acted simply to bring to the attention of Mr. Alvord the information brought to the White House, "without any specific recommendation of any kind to him or to the Interstate Commerce Commission. I never, at any time, conferred with or made suggestions to the members of the Interstate Commerce Commission with reference to the shipments of coal."

Commissioner Aitchison corroborated Mr. Tumulty's denial as to there never having been any communications between him and the Commission on the subject.

While Commissioner Aitchison has been the man who came into contact with the public in the matter of coal car distribution, the questions raised by the coal situation had to be decided by the division of which he is a member, the other members being Chairman Clark and Commissioner Potter. Men who know them believe that if Mr. Tumulty had come to them with suggestions as to how they should perform their duties, he would have been invited to show for whom he was appearing and make his representations at the formal hearings on the subject.

There is a feeling among those at the Commission who know what was going on in September that Mr. Tumulty was doing something intended to influence the Commission. He was in consultation with Assistant Director-General Alvord with a view to coming to a conclusion as to whether the president should appoint a fuel administrator. That consultation was had nearly two months after the Commission had undertaken to deal with the coal situation by means of service orders.

The National Coal Association, through D. B. Wentz, its president, and Daniel Willard for the railroads, argued against the appointment of a fuel administrator, because they said the coal operators, the railroads and the Interstate Commerce Commission were dealing with the subject. Mr. Wentz said he asked Mr. Tumulty to permit him to make daily reports to him to show how well the matter was being handled and the uselessness of appointing a fuel administrator. Mr. Wentz made a speech in Cleveland recently that has been interpreted as a bit of glorification for the operators, the railroads and the Commission for their success in preventing the appointment of a fuel administrator. Tumulty did not let Wentz make daily reports to him, but directed him to keep in touch with Alvord.

That is as near as Tumulty came to being the real director of coal priorities. If he had persuaded President Wilson to appoint a fuel administrator, there might have been conflict between that official and the Commission, because, primarily, coal production is a question of transportation and transportation is in the domain of the Commission. It is acting under a statute enacted since the passage of the Lever law, under which the President would have acted had he appointed a fuel administrator. In the event of conflict between a fuel administrator and the Commission, the courts would have had to determine whether the later or the earlier statute was to be followed.

The production of soft coal, in the week ended October 30, amounted to 12,338,000 tons, the new high record for the current year. That big production now puts the amount mined this year about 51,000,000 tons ahead of the same period in 1919, but it is still behind that of 1918, when the production was so great that there was an acknowledged surplus of more than 30,000,000 tons, carried over into 1919.

While no one of responsible position at the Commission cared to be quoted in connection with the matter, attention was directed to the fact that the threat of Senators Calder and Edge was made after there was a decided drop in the price of coal, especially in the east, so that there will probably be no need of

the two senators to make even a move toward executing their threat. On account of the fact that the price has not fallen throughout the whole of the country, it was suggested, they may obtain credit for having forced a fall, especially in those parts of the country where the price was still high on November 6.

In a statement November 6, Colonel D. B. Wentz of Philadelphia, president of the National Coal Association, denounced as false the statement of Franklin T. Miller in New York that the bituminous coal operators had used, or attempted to use, persuasion with Joseph P. Tumulty, secretary to the President, to influence the Interstate Commerce Commission to issue priority orders so that operators could "dodge" contracts at lower prices than those prevailing in the open market, during the coal shortage.

"Any such statement is absolutely unfounded," said he. "The operators of the National Coal Association, through their officers, kept Mr. Tumulty informed as to developments in the effort to overcome the serious coal shortage. That is all they sought to do and all that was done. Mr. Miller's insinuations are baseless and utterly false."

Colonel Wentz stated that the bulk of soft coal operators, throughout the shortage emergency, have been charging reasonable prices and have severely condemned unfair practices in the handling of the product. The accusation of "profiteering," he emphasized, does not apply to the industry at large.

The National Coal Association issued the following as to the coal situation November 6:

"With the average output of soft coal now running at more than 12,000,000 tons a week, prices in bituminous mine fields throughout the country are on the decline. Within the last month there has been a drop in price of more than 25 per cent in many of the fields.

"Operators in soft coal fields where unusually high prices existed, have, within the last 10 days, been setting up fair practice committees and, working in conjunction with Attorney-General Palmer, have put under way a determined effort to eradicate abuses in the handling of coal. Coincident with this effort, prices in these particular fields have already begun to fall.

"The lowering of prices was forecast by operators in the bituminous coal industry weeks ago. A natural falling off in high prices where they existed, the operators stated, was largely contingent upon advanced production up to a point where the supply would equal the demand. That point is rapidly being approached.

"The immediate soft coal wants of the whole nation have already been met, excepting in a few isolated communities, while already the storage of coal for winter uses in many parts of the country has begun. The movement of coal to the northwest for winter supply has proceeded to the point where a sufficient stock is now assured. With the release of open-top cars from the lake movement, due to the recent suspension of the Great Lakes priority by the Interstate Commerce Commission, because of adequate dumpings at the lake docks, some 2,000 more cars are now at the disposal of operators and distributors in the movement of soft coal to the middle western states, including Ohio, Indiana and Michigan, where until recently an acute shortage prevailed.

"With a supply of cars which will enable the operators to turn out 12,000,000 tons of coal for some weeks to come, prices in the market will continue to drop."

## EXPORT TRADE IN COAL

(By Joshua W. Alexander, Secretary of Commerce)

In discussing a national policy for the export of coal it should be borne in mind that coal is the keystone of modern industrial life. Prior to the development of the steam engine, industry was essentially local, and trade between nations was insignificant compared with the extent to which we are familiar with it. The use of coal has made possible the quantity production of commodities and their transportation to all parts of the world.

We are dependent upon coal for the power to operate our industries, for the means of transporting the raw material to and the finished products from the factory to the market, for the transportation of workers from their homes to the factories, and for the light and heat that is used in our homes. It is true that a certain amount of power is being developed by hydroelectric means and by the use of mineral oil, but this amount will remain insignificant in comparison with that derived from coal. It is therefore essential that any nation whose prosperity is based upon the development of industry must have adequate resources of cheap and efficient fuel.

Looking at the coal industry, therefore, from the point of view of national interest, we find that the first requirement is that our domestic industries and utilities should be furnished with an abundant supply of fuel at as low a price as will yield adequate compensation to the labor and capital devoted to the industry. This does not mean that we should not export coal, but that we should first assure ourselves that domestic industry enjoys an adequate supply before we make any determined effort to obtain foreign markets.

From the national point of view coal is not a particularly desirable commodity for export. It is a raw material and its export brings profit only to those immediately concerned in the industry. It is far better to export coal in the form of manufactured commodities than in its raw state. If coal is utilized for power in the manufacture of finished products the labor and capital engaged in producing coal will receive the same return as if the coal was shipped overseas. In addition, the labor and capital engaged in the manufacture of finished commodities will also share in the profits, and the national gain will be so much greater.

It should also be borne in mind that the export of coal on a large scale means the depletion of our reserves and the mining of coal at an increasing cost of production. When vegetable products, such as cotton and grain, are exported, there is no depletion of our reserves, as another season brings forth an additional crop. It is true there is some depletion of the soil, but this is readily remedied by scientific methods of agriculture. The export of coal, however, takes away just so much of the product as is nearest the surface. The cost of production increases, and there is a tendency to bring lower-grade coal into the market.

It has frequently been pointed out that the total exports of coal form only a small percentage of our total production, but the coal that is exported comes almost entirely from the Appalachian field, which also supplies the most highly developed industrial districts. The too extensive development of the export trade from this field is likely to result in an increased price to domestic consumers who are manufacturing for home consumption and foreign trade.

While coal in itself is not a profitable commodity for export from the national point of view, there are markets to which coal may be profitably exported with a view to developing and consolidating our foreign trade and our merchant marine.

For the countries to the south of us the United States is the logical and natural source of supply for coal. The production of coal has not been developed in these countries, and we can well afford to ship to that region sufficient coal for the development of their industries and for the use of their public utilities. Our national prestige in these countries would be increased if the United States were looked to as a friendly and certain source for such indispensable raw material, and our influence would be correspondingly injured if any drastic action was taken designed to hinder the free movement of coal to these countries.

Coal may also be exported to good advantage to countries on trade route where our merchant ships lack cargo for the outward voyage. If ships that would otherwise go out in ballast can be loaded with coal there would probably be a material reduction in return freight rates, and our industries would have the benefit of a reduction in freight on imported raw material. To accomplish this end, it will be necessary for the coal producers and the shipping interests to work in very close cooperation.

At the present time there is a shortage of coal throughout the world, and the United States is shipping coal to European countries that were formerly supplied by England and Germany. It is quite proper that we should make an effort to supply coal to European manufacturing countries in order that industrial reconstruction may be facilitated and economic stability achieved. It is to our interest to have the economic life of Europe again restored to a firm and stable basis, and during the period of the present emergency we might well continue to export coal to that continent. This, however, should not be done at the cost of the domestic consumer, as our first duty is to support our own industries. Moreover, I think that there is little possibility of American coal producers obtaining a permanent foothold in Europe. When the normal production of coal is again resumed in the United Kingdom, Germany and France, it seems hardly likely that American producers can compete with mines that are so much closer to the point of consumption.

Before the war the United Kingdom was the greatest coal exporting nation, but at the present time that country has found it necessary to put very definite restrictions upon exports of fuel. The development of the English coal trade was due in large measure to the fact that England was dependent upon foreign sources of supply for a large part of its foodstuffs and industrial raw materials. The tonnage of imports greatly exceeded the tonnage of exports, and if coal had not been available for shipment many outbound vessels would have sailed either partly loaded or in ballast. The availibility of coal for export enabled England to ship coal in outward-bound vessels and thereby effect a material reduction in freight rates on the return cargo.

It should be pointed out that at the present time this condition does not exist in the trade of the United States, as our outbound vessels have little difficulty in obtaining cargo, but many of them return to this country in ballast.

In 1913 the average monthly production of coal in the United Kingdom amounted to 23,959,000 long tons. Owing to the lack of development work during the war and to labor difficulties, the average monthly production of coal in the United Kingdom

during the first six months of 1920 was only 20,201,000 tons, or 3,758,000 tons less than in 1913. The average monthly export during 1913 was 6,117,000 tons. There were therefore available for domestic consumption and for bunker coal during 1913 an average of 17,842,000 tons each month. If the amount required for home industries and for bunker purposes is the same now as in 1913, the average amount available for export each month would be only 2,359,000 tons. As the domestic demand for coal is probably greater than in 1913, and as it has, perhaps, been deemed advisable to have some margin of safety, the British Government has set a limit of 21,000,000 tons per annum as the amount which may be exported, or an average of 1,750,000 tons per month.

It will thus be seen that prior to the war the British policy encouraged coal exports, while at the present time the government has placed very definite restrictions upon the amount that may be shipped. This change in policy is not due to an abandonment of the principles involved in the old policy, but to the fact that it is necessary to restrict exports in order to provide sufficient supplies for domestic consumers.

Some of the producers of coal who read this article may think that I lack sympathy for the development of the coal industry. If I have laid down some principles which seem to discourage the export of coal I do so because I believe that these principles form part of a sound national economic policy, and I believe that coal producers will benefit in the long run more by a sound economic export policy than by a procedure that might for a short time promise to yield larger profits. What is best for the country as a whole will in the long run be best for every industrial group.

The primary interest of the coal producer is in furnishing coal to domestic consumers at as low a rate as possible. The development of foreign markets for manufactured goods will inevitably result in a stable domestic market for coal. I am sure that no coal producer would advocate the inefficient and wasteful use of coal in our domestic industries merely because such a use would cause more coal to be consumed, and would probably increase the price. For the same reason I do not believe that coal producers will favor an indiscriminate export policy.

When normal conditions are restored we should limit our endeavors to export coal to countries that are our natural markets and to countries needing coal to which our vessels sail in ballast. After the present shortage has been met we should leave the Europtan field to European producers. We should use coal to develop our merchant marine and our foreign trade. Cheap, efficient and accessible coal is one of the foundations of industry. Such a basis for our manufacturers will greatly assist them to penetrate into foreign markets, and the industrial activity thus promoted will result in both direct and indirect profit to the coal producer.

## CALLS COMMISSION A FRANKENSTEIN

Declaring that, in the exercise of its power to regulate the railroads, the Interstate Commerce Commission "has deemed it necessary to control in a measure the practices of the industries and even the personal habits of the household," George H. Cushing, managing director of the American Wholesale Coal Association, in an address on "Coal and Railroad Regulation Joined" before the Cleveland Advertising Club, November 5, said: "We have a Frankenstein on our hands."

"Whenever I think of these things," he said, after he had reviewed various phases of governmental regulation of the coal industry and the railroads, "I am torn between conflicting desires to swear and to laugh. When in a serious mood, I feel like saying what Charles E. Hughes said to the Supreme Court when he was arguing against the government's interpretation of the Lever law: 'If this be the law, then this is the end of the Republic.'

"When that solemn mood passes, I restrain myself with difficulty when I recall that the Interstate Commerce Commission was given its power to curb the growing autocracy of the railways; to give the small shipper a chance and—ye gods, what a change—to remove the menace of railroad domination of business.

"While discussing this great change which has come to our national industrial affairs, we deceive ourselves unless we admit at the start that the service orders of the Interstate Commerce Commission were not an abnormal assumption of power. On the contrary, they were the natural product of a system of regulation studiously built up through thirty years. That is, we as a people had a job of house-cleaning to do on the railroads. We were, mentally, too lazy to undertake it. Instead, we chose to delegate our work to a commission endowed with discretionary powers. We might have known that if we gave to a few men the right to exercise their discretion with respect to a matter touching vitally the welfare of all, that power was likely to be abused.

"We might have known that if we endowed that commission with plenary powers and made it the sole judge of the facts, we must count upon it that almost invariably a certain percentage of commissioners would, in full possession of those powers, become opinionated, conceited and finally arbitrary. We might have known that so long as men are men a certain percentage of those who were chosen as commissioners would come to prefer their own opinions to those of the whole mass of people and would miss the common purpose while struggling to sustain the sanctity of their own views.

"In another respect these orders are not abnormal but are the natural product of the system itself. That is, if we regulate any industry in order to control its managers in a few things, we must consent in time to see the regulators extend their powers in an effort to control them in many things. This effort to control coal was not the first exercise by the commission of a new power. It was merely another exercise of an old power in a slightly new direction. It does not shock us because it is anything new in our administrative machinery but merely that machinery when in full swing extended its zone of influence to cover private business. We imagined, apparently, that we could create a force and then control its operations. It seems we cannot. The essential vice, therefore, in this new attempt at regulation, is not that it creates any new power but that by extending an old power to new fields, it prove the possibilities of the machinery which we set in motion when we adopted the device of a Commission charged with discretionary powers. The vice, as I see it, is not in the mere method of administration, but in the governmental theory upon which the law itself was founded.

"To make this clear, let me put it in another way. When we started to regulate the railroads thirty years ago, we had two entirely different things to consider. On the one side there were the physical properties of the railways embracing the right of way, the tracks, the cars and engines, the stations and the telegraph lines. These were physical, impersonal things which could not sin. They had in themselves no powers of vice, but only powers of virtue.

"We had, on the other hand, men who managed and financed those railways. These men were guilty of offenses against good public policy and of maltreating shippers, employes and stockholders. They should have been called to account personally for their misdeeds.

"Congress decided to strike at the viciousness of these men. But, instead of calling them personally to account for their misdeeds and instead of framing a law which would bring them surely and quickly to justice, the Congress chose to put the physical properties themselves in shackles. It hoped, through controlling the properties to control the men who managed them. That is, we decided to regulate the industry instead of punishing the offenders against public morality. This, to my mind, is the most glaring example in existence of the direct misapplication of a legislative remedy. We gave the medicine to the thing sinned against instead of to the sinner. We tried to correct the criminal by controlling his tool.

"We may say what we will, but just the same it was logical, even though astounding, for this system of control to develop the new theory which is now heard everywhere in the United States. This is so amazing it needs explanation.

"The old theory used to be that the producer could sell and the user could buy and ship where he pleased. The railroad was considered to be the common servant of both and was obliged to execute the orders of both. The old theory, therefore, was that the carrier was the servant and its patrons the master.

"The new theory is that the railway is master and hence that the desires of the producer to sell and of the buyer to get things is subordinate to the ability or the wish of the carrier to carry. In other words, the new theory is that business must be whittled down to capacity of the carriers, instead of the carriers being adjusted to the needs of commerce.

"To those of you who have not been brought, as I have been, in intimate contact with this new theory in operation, what I have just said seems but glittering generality, which may be classed under the general heading, 'Amazing if true.'

"Lest you think I talk without knowledge—that I merely assert—I call your attention to two circumstances of very recent date.

"In the days when trade was still free, the consumer of coal exercised his privilege to buy when and from whom he pleased. If he did not replenish his stock of coal until the day before the old supply was likely to become exhausted, he felt he was exercising only a personal privilege.

"In those days, the merchants in coal knew that by far the larger percentage of the people bought coal only when they needed it. So, the merchants made it a practice to have large quantities of coal always running to their order, which they could reconsign to the improvident or preoccupied user.

"In August, this year, the railways, on the advice of the Interstate Commerce Commission, drew rules they embodied in their tariffs, which made the privilege of reconsigning coal so expensive as to prohibit any other than direct shipment from the mine to the consumer. I protested against these rules to the Association of Railway Executives, declaring that they breathed an effort to destroy the business of the wholesaler in coal and

to police the actions of the coal users to such an extent that they must all in future be forehanded in their buying. Behind my protest was the fact that in the crowded cities of the East, it is impossible to find space in which to store all of the coal needed by that community. In the sparsely populated districts of the middle west it was impractical to store the kind of coal they commonly receive and cost of storage is prohibitive. The impertinent answer which I received from the Association of Railway Executives, was that the people of the United States have had enough warning that they must prepare to store coal. If they are not prepared to protect their coal needs, they must be so punished by the railways that they will create storage capacity at once.

"I was not, and am not now, content to leave the decision of such an important question in the hands of a small group of men who are employed by the railways. So I appealed from the decision of this committee to the Interstate Commerce Commission itself. In the course of that appeal I came in contact, on Monday of this week, with a high official of the American Railroad Association, which is half a railway organization and half a subsidiary of the Interstate Commerce Commission. It is the connecting link between the carriers and the Commission. From him I had this amazing statement:

> The ideal transportation situation is a movement direct from producer to consumer. We are now in position where we have to consider the needs of transportation instead of the needs of business or the convenience of the people. It may annoy the people for a while, but they will have to come to it. In the end they will not mind.

"Thus the issue has been drawn. We created a personal power to regulate the railways. By extended Congressional acts, it has become master of the railways. To exercise that power properly, it has deemed it necessary to control in a measure the practices of the industries and even the personal habits of the household. As a result, the nation faces a truly amazing situation. We have a Frankenstein on our hands.

"The people of the United States will have to decide soon whether they will allow this personal power to continue and then try to confine its operations to prescribed limits or whether they will set in motion a new method of procedure which will do what we want done and avoid the present danger.

"If the power itself is good and if it is in thorough accord with the best of the essentially American doctrines, the thing to do is to continue, but control it. I will not discuss that question. However, the grave danger is that we may not always be able to control this power or to confine its zone of exercise. This is so for the reason that the Commission is the sole judge of the facts in any proceeding touching anything within its scope of authority. Even the courts will not review them. However, the statement of facts dictates the decision based on those facts. Therefore, when the Commission is allowed to dictate the statement of fact, it prejudges the case in any court.

"Also, the Commission is answerable to no one. There are no checks on its actions. There are no balances to work against it. Those things which were put into the Constitution to control the co-ordinate branches of government were left out of the law which created the Commission. In most cases, there is not even possible an appeal from its decisions. It is absolute in its sphere. And, in the new law, it is even absolute in its opinions.

"Please remember that I am not criticizing the personnel of the Commission. I am only talking about a governmental method of procedure. I am describing a legislative device which we have created. I am telling how it is behaving; I am asking whether this is the kind of thing we want to continue in operation.

"If we, as a people, decide that this is not to our liking, we are obliged to suggest a substitute. If we do, what shall it be? Personally, I believe we should undertake, in the light of recent experience, to study the whole question afresh and try to outline a method of procedure which will do what we should have started to do thirty years ago. That is, I believe that we should allow the physical properties to remain free of detailed control while drafting a criminal statute which would hold railway managers and financiers personally responsible for any acts which are contrary to a declaration of what is good public policy.

"To be specific, I, personally, believe that we should revive, for use in America, the theory of the King's highway. We should say that a crime, if committed upon the common carriers is a far more serious offense against the state than the same crime committed in any other part of the realm.

"I believe that we should then catalog the crimes we wish to guard against and to fix the penalty. The penalty, I believe, should be the forfeiture of life, of liberty, or of the property involved or any combination of these penalties.

"In the catalog of such possible crimes might be included: A greater increase in the capital stock or funded debt of a carrier than is warranted by the intrinsic value of the roads, the current credit of the company being considered; the preferential treatment of one shipper over another; the failure of the carrier adequately to protect the life and limb of its employes; the use of money earned in transportation to put the carrier in business in competition with its patrons; and the union of the managements of a railroad and of the larger corporations from which it buys its supplies. These are offenses against good public policy for which a penalty can be attached and which can easily be punished by ordinary court proceedings.

"Having arranged to protect public morals by such a statute, if there remains a desire that we continue the research work now done by the Commission—such as the determination of the physical value of the railroads, etc.—that could be carried on by the creation of a Department of Transportation. Into such a department might also go all research work incidental to the waterways and the maintenance of public highways.

"I call your attention especially to the fact that we are now vastly more in need of transportation facilities than we are of further regulation of the carriers. We are in a period of reconstruction even as we were after the Civil War. Sixty years ago, when we faced a similar need, we gave an incentive to railroad building—by the transportation act of 1868—which caused it to run far ahead of the growth of commerce. As a result, we had for fifty years enough transportation and more.

"Today, we need another great American railroad charter. Instead of getting it or planning to get it, we have arranged merely for the management and financing of the existing carriers. We have arranged that there shall not be more than thirty railroad companies. This prevents new lines from building. We have arranged that any new extensions of railways must be consented to by the Commission. If consented to, the extensions must naturally be parts of one of the thirty systems. This kills the spirit of enterprise on the part of any individual who may have everything necessary to a new railroad except a vital connection with one of the thirty systems.

"And, having thus created a monopoly of the carriers, we have put them in a mood to exact every penny they can in revenue and to stint in expenditure so completely that the spirit of accommodation is gone. I recall to your mind the incident about reconsigning.. The railroads call this a 'service.' They have demanded the right to be paid for that service, whereas service is something which every business man gives. In demanding payment for service the railroads occupy the undignified position of having made an alliance with bootblacks, barbers and hotel waiters, who, alone, take such a view of things. And, the carriers have become such thorough mendicants they do not blush when they make this demand

"Our job, as a people, is to save the railways from themselves and to free American trade from autocratic control of any kind. It is a larger order. I do not envy the new Administration the task which it is called upon to perform."

## SUBORDINATE OFFICIALS

*The Traffic World Washington Bureau*

Revised regulations designating the classes of railroad employes entitled to be included within the term "subordinate officials" and governing the making and offering of nominations for appointment of members of the Railroad Labor Board were issued by the Interstate Commerce Commission November 5.

The new regulations with respect to "subordinate officials" are more comprehensive than the regulations which are superseded and which were issued March 23. (See Traffic World, March 27, p. 572.) They meet in part the requests made at the hearing October 1, before the Commission, when various classes of employes asked to be classed as "subordinate officials."

In the regulations of March 23 the Commission declined to include traveling auditors and supervisory station agents in its definition of "subordinate officials." In the new regulations traveling auditors who are not "vested with discretionary power to determine the scope or character of their duties" are designated as "subordinate officials." The supervisory station agents, however, remain excluded from the "subordinate official" classification, the Commission holding that they are "official and responsible representatives of the company in its relationships with the public and frequently in a legal sense." The Commission states that the new definitions include all of the classes or employes whose claims to recognition were presented at the hearings, except the supervisory station agents.

The regulations designating the groups of organizations of employes which may submit nominations for the Railroad Labor Board are the same as those heretofore announced by the Commission (see Traffic World, March 13, p. 482, and March 27, p. 573), with the exception that the Railway Traveling Auditors Association of America has been added to Group No. 4. The Commission declined to include the Supervisory Station Agents' Association in Group No. 4 on the ground that the members thereof are not "subordinate officials" within the meaning of that term as used in the transportation act.

The effect of the revised regulations is to permit those employes represented by the groups set forth therein to have their disputes with their employers submitted for adjustment to the Railroad Labor Board. The supervisory station agents, therefore, are precluded from going before the Railroad Labor Board, but must deal directly with the company in matters relating to compensation and working conditions.

The regulations designating the classes of employes that are to be included within the term "subordinate officials" follows:

It appearing that paragraph 5 of Section 300 of the Transportation Act, 1920, provides:

(5) The term "subordinate official" includes officials of carriers of such class or rank as the Commission shall designate by regulation formulated and issued after such notice and hearing as the Commission may prescribe, to the carriers, and employes and subordinate officials of carriers, and organizations thereof, directly to be affected by such regulations.

It further appearing, that public hearing was had on March 15, 1920, "for the purpose of determining what classes of officials of carriers shall be included within the term 'subordinate official,' as that term is used in Sections 300 to 313, both inclusive, of said Transportation Act, 1920," and the Commission having prescribed by regulation duly formulated and issued on March 23, 1920, that the term "subordinate official" as used in said portions of said act shall include employes of the classes and ranks therein designated.

And it further appearing, that, pursuant to petitions duly filed, a further public hearing was had on October 1, 1920, for the purpose of determining whether the regulations aforesaid should be extended or otherwise modified,

It is ordered, and the Commission hereby prescribes, that the term "subordinate official" as used in said portions of said act shall include the following, and that these regulations shall supersede the aforesaid regulations of March 23, 1920, which are hereby set aside.

Auditors. This class shall include traveling auditors engaged in auditing station accounts, checking transportation and other papers, etc., who are not vested with discretionary power to determine the scope or character of their duties.

Claim agents. This class shall include claim agents below the rank of assistant general claim agent or chief claim agent. It does not include the so-called "claim investigators." We are of opinion that such employes who are engaged in clerical work are not "officials of carriers."

Foremen, supervisors and roadmasters. This class shall include roadmasters with rank and title not higher than division roadmaster, track supervisors, maintenance inspectors, supervisors of bridges and buildings, with rank and title below that of superintendent of bridges and buildings, supervising carpenters with rank below that of superintendent, supervisors of water supply, supervisors and inspectors of signals with rank and title below that of assistant signal engineer, and foremen or supervisors of machinists, boiler makers, blacksmiths, sheet metal workers, electricians, car men, and their helpers and apprentices, with rank and title beneath that of general foreman.

Train dispatchers. This class shall include chief, assistant chief, trick, relief and extra dispatchers who are vested substantially with the authority of superintendent or assistant superintendent.

Technical engineers. This class shall include civil, mechanical, electrical and other technical engineers inferior in rank to engineers of maintenance of way, chief engineers and division engineers; engineers of maintenance of way and other technical engineers. We are of opinion that instrument men, rod men, chain men, designers, draftsmen, computers, tracers, chemists and others engaged in similar engineering or technical work are not "officials of carriers."

Yardmasters. This class shall include yardmasters and assistant yardmasters, excepting general yardmasters at large and important switching centers where of necessity such general yardmasters are vested with responsibilities and authority that stamp them as officials.

Storekeepers. This class shall include storekeepers or foremen of stores who are not vested with authority to make purchases. It does not include general storekeepers and assistant general storekeepers.

The above definitions include all of the classes of employes whose claims to recognition as "subordinate officials" were presented at the hearings, except supervisory station agents. The supervisory station agents are those who have supervision of the work of other station employes. They cover the range from the station where one employe other than the agent is employed to the agents at the largest and most important points. They are the official and responsible representatives of the company in its relationships with the public and frequently in a legal sense. Their compensation naturally varies with the responsibilities of their positions. It is not believed that this class can be consistently included within the term "subordinate official," as that term is used in Title III of the Transportation Act, 1920

The list of subordinate officials above prescribed may be enlarged or restricted after due notice and hearing, if and when occasion warrants.

**The regulations governing the making and offering of nominations for appointment of members of the Railroad Labor Board follow:**

The following regulations supersede all previous regulations governing the making and offering of nominations for appointment of members of the Railroad Labor Board:

Section 304 of the Transportation Act, 1920, provides for the creation of a Railroad Labor Board to be composed of nine members. Of these nine, three are to constitute the labor group representing the employes and subordinate officials of the carriers, and three are to constitute the management group representing the carriers, to be appointed by the President by and with the advice and consent of the Senate from not less than six nominees whose nominations shall be made and offered by such employes, and not less than six nominees whose nominations shall be made and offered by the carriers, in such manner as the Commission shall by regulation prescribe.

The Commission is required by regulation, formulated and issued after such notice and hearing as the Commission may prescribe to the carriers and employes and subordinate officials of carriers, and organizations thereof, directly to be affected by such regulations, to determine the classes that shall be considered as coming within the term "subordinate official."

The overwhelming majority of the railroad employes and subordinate officials, stated by those who are in a position to speak with confidence and authority to be more than 90 per cent, are members of or represented through certain organizations of employes. These organizations and their representatives have been recognized as authorized to speak for and represent the several classes of employes by the railroad companies prior to Federal control, by the Railroad Administration during Federal control and by the President in conferences and negotiations conducted by him. It is deemed advisable to classify these representative organizations into three groups with respect to the more or less analogous character of the services performed, aiming to have the nominees, as nearly as possible, representative and conversant with the interests of all the classes of employes and employment. For the purpose of making and offering nominations as members of the labor group on the Labor Board, the Commission prescribes that these organizations of employes shall be grouped as follows:

Group 1:

Brotherhood of Locomotive Engineers.
Brotherhood of Locomotive Firemen and Enginemen.
Order of Railway Conductors.
Brotherhood of Railroad Trainmen.
Switchmen's Union of North America.

Group 2:

International Association of Machinists.
International Brotherhood of Boilermakers, Iron Shipbuilders and Helpers of America.
International Brotherhood of Blacksmiths, Drop Forgers and Helpers.
Amalgamated Sheet Metal Workers, International Alliance.
Brotherhood Railway Carmen of America.
International Brotherhood of Electrical Workers.

Group 3:

Order of Railroad Telegraphers.
United Brotherhood of Maintenance of Way Employes and Railroad Shop Laborers.
Brotherhood of Railway Signalmen of America.
Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes.
International Brotherhood of Stationary Firemen and Oilers.

The accredited representatives of the organizations embraced in each of the above groups and duly authorized so to act shall agree among themselves upon nominees representative of the group, but the three groups must present a total of not less than six nominees.

The nominations agreed upon by each group shall be signed by the representatives of the several organizations in the group or by some one authorized by them so to act and shall be transmitted direct to the President accompanied by a certificate that the nominations have been made in accordance with these regulations.

The great mass of railroad employes are members of or represented through the organizations named above. These organizations, however, include, or may include, only a small percentage of the subordinate officials, and the subordinate officials not so included, as well as employes who may not be members of or represented through the above organizations, are entitled under appropriate regulations prescribed by us to make and offer recommendations for members of the labor group. It should be stated, however, that a percentage of the organizations and employes who contend for their separate right of making and offering nominations for members of the labor group is included in the membership of the above-named organizations.

In view of the above considerations, we have added a fourth group for the purpose of making and offering nominations. Included in this group 4 are the following organizations, which comprise all organizations not included in groups 1, 2 and 3, which have appeared at our hearings and shown that their separate right to make nominations ought to be accorded under the Transportation Act, 1920, excepting the Supervisory Station Agents' Association, the membership of which we have held are not included in the term "subordinate official":

Group 4:

Railway Men's International Benevolent Industrial Association.
American Federation of Railroad Workers.
Order of Railroad Station Agents.
American Train Dispatchers' Association.
The Roadmasters' and Supervisors' Association of America.
National Order of Railroad Claim Men.
Railroad Yardmasters of America.
International Association of Railroad Supervisors of Mechanics.
International Association of Railroad Storekeepers.
Colored Association of Railway Employes.
Brotherhood of Railroad Station Employes.
Order of Railroad Telegraphers, Despatchers, Agents and Signalmen.
Brotherhood of Railway Clerks.
American Association of Engineers.
Grand United Order of Locomotive Firemen of America.
Porters' Union.
Skilled and Unskilled Laborers (Railway).
Order of Railway Expressmen.
Railway Traveling Auditors' Association of America.

The accredited representatives of the organizations included in group 4, duly authorized so to act, shall agree among themselves upon nominees representative of each organization, or of nominees jointly representative of a number of such organizations, provided they agree among themselves upon nominees jointly representative of any of the organizations in this group.

The nominations agreed upon by each of the organizations in group 4, or agreed upon as jointly representative of any of the said organizations, shall be transmitted direct to the President, accompanied by a certificate that the nominations have been made in accordance with these regulations; and should also include statements submitted by the duly authorized representatives of each of the organizations, or of such organizations voluntarily associated for the purpose of making joint nominations, setting forth their total membership, exclusive of officials not embraced within the classes of subordinate officials as defined by the Commission's regulations of November 1, 1920, or as same may be amended, distinguishing between subordinate officials and higher officials; the percentage of the membership of such organizations, exclusive of such higher officials, who are, or may be, members of the organizations named in groups 1, 2 and 3, and the distribution of such membership as between employes and subordinate officials.

The Association of Railway Executives is representative of approximately 95 per cent of the railroad mileage of the country and is authorized by the carriers members thereof to speak for and represent them in matters of this kind. The officers of that association have consulted with most of the carriers not members of the association and secured their assent to the presentation of nominees by the association.

For the purpose of presenting nominees for appointment on the Labor Board to represent the management group the Commission prescribes that such nominations, not less than six in number, shall be made and offered by the Association of Railway Executives.

The nominations so made shall be transmitted to the President, accompanied by a certificate that they have been made in accordance with these regulations.

The act provides in section 304 that any vacancy on the Labor Board shall be filled in the same manner as the original appointment. There is no specific provision for modification of the regulations prescribed by the Commission, but the authority to prescribe regulations is believed in the absence of provisions to the contrary to also confer authority to modify them if and as occasion or necessity for such modification should arise.

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## MAINTENANCE IN GUARANTY PERIOD

*The Traffic World Washington Bureau*

A series of elaborate formulae which the railroads intend using in the calculation of maintenance, during the guaranty period, has been prepared by the adjustment committee of the sub-committee on the allowance of maintenance during the guaranty period, and submitted by the carriers to the Commission. The formulae have been revised to October 30 and are intended to show the steps by which the carriers, in contending for the amounts of maintenance they will claim, arrived at the conclusion that the Commission, for maintenance during the period from March 1 to August 31, should allow the sums claimed by them.

According to the explanatory notes accompanying the tables to be used, the elements to be included in the factor for equating the test period (the three fiscal years ending with June 30, 1917) expenditures for maintenance to the guaranty period, comprise the following: Difference in the cost of material; difference in the cost of labor; difference in the amount of property to be maintained; and difference in the use of the property.

The tables in the first part of the rules pertain to maintenance of way and structures and in the second to the maintenance of equipment. To show the necessity for the formulae, the committee said:

"In order that the guaranty may provide for the 'same relative amount, character, and durability of physical reparation' as one-half that of the annual test period average, it is necessary to measure that reparation, and find its cost under the conditions which obtained during the guaranty period.

"Physical reparation consists of the replacement of materials, and certain other operations not directly in connection with the use of materials, but practically all of which are for the protection of, or to obtain the fullest service from, materials.

"Under normal conditions there will be a certain fixed relation between the amount of material used and between all of these other operations.

"Under the provisions of the standard contract the test period is assumed to be a period of normal operation; therefore, the relation of the material used to all other operations must be considered as a normal one, so that the materials used are a measure of the physical reparation of that period.

"If during the guaranty period an allowance is to be made for one-half the average annual physical reparation of the test period, and of the same relative 'character' and 'durability,' that allowance must provide for the use of one-half the average annual test period materials and other operations, but under the conditions existing during the guaranty period.

"While it is, of course, realized that the proposed formulae, as applicable to the information readily available, do not produce results which are absolutely exact from a mathematical standpoint, they do, in the opinion of this committee, provide a method of determining in a practical way an allowance for maintenance during the guaranty period which is substantially fair and just.

"The elements to be included in the factor for equating the test period expenditures for maintenance to the guaranty period comprise the following:

1. Difference in cost of material.
2. Difference in cost of labor.
3. Difference in amount of property to be maintained.
4. Difference in use of property.

"For the purpose of computing the guaranty period allowance, accounts 302 to 307, inclusive, shall be included with maintenance of way accounts and excluded from maintenance of equipment accounts."

One of the most significant declarations in the formulae, it is believed, is the assertion "that equation factors, to be accurate, must be derived from weighted averages." In the notes for the application of the formulae for maintenance of way and structures, the committee said:

"Much of the data required in all sections of the formula may be obtained direct from the Federal Administration Form 101 where available and prepared with satisfactory accuracy. Where such form is not available the information can be obtained from the reports to the Interstate Commerce Commission and the current accounts of the carrier.

"Specific sources of information are not recommended by the committee as it is believed that the carriers may prefer to select sources from which they may obtain the information most readily, and the committee sees no objection to any source which the carrier can satisfy the Commission is reliable.

"The committee directs attention to the fact that equation factors to be accurate must be derived from weighted averages.

"The accuracy of the results from any equation factor depends upon the closeness of adherence of the facts to weighted averages.

"It is recognized that any considerable disturbance in the relation of a class of expenditures to the total, in the test period as compared with the guaranty period, can be taken into account with accuracy only by properly weighting such class of expenditures in each period.

"The committee cannot recommend the definite difference in the ratio of any class of expenditure to the total, between the two periods, which will produce a substantial inaccuracy in the results.

"If a difference sufficient to produce a substantial inaccuracy seems to exist, the method of checking and determining the difference due to causes other than price set forth in Plan 3 is recommended."

Suggestions as to how the efficiency of labor may be measured are contained in notes under the head, "Causes for increased cost of labor," as follows:

(a) Increased time charged for the performance of similar operations. This should be developed by studies of the cost of performing similar operations in the test and guaranty periods.
(b) Effect of substituting an eight-hour day for a longer day and the resulting increase in percentage of time lost in preparing for and stopping work.
(c) Allowance of twenty minutes per day for lunch and one hour per week for checking in and out, required by the National Agreement.
(d) Performance of work by specifid crafts required by the National Agreement.
(e) Time of shop committee men and employes on grievances and conferences as required by the National Agreement.
(f) Maintenance of seniority list and the posting of vacancies.
(g) Changes in labor classification.
(h) Change in overtime rates not taken into account in statement of hours and compensation used to determine labor price equation factor.
(i) Consideration of any other causes which may obtain on the carriers' property.

Note: If a carrier can make the study contemplated under (a) so as to include all factors of cost, the comparisons developed by the study may be used for computing the equation factor to be applied to the test period expenditures for material and labor to derive the guaranty period allowance for material and labor for the test period amount and use of property, thereby substituting this factor for the composite factor used in section 3 and eliminating the computations under sections 1 and 2.

## LOUISIANA FOURTH SECTION CASES

*The Traffic World Washington Bureau*

In an effort to dispose of fourth section situations in western Louisiana, arising by reason of its decisions in the Natchez cases, the Commission, on November 8, put out two fourth section orders and a modification of its order in that matter, docket No. 8845, and related cases.

The first of the fourth section orders is No. 7742, pertaining to rates between western Louisiana points and between Natchez and western Louisiana points. It was issued on further consideration of the record in No. 8845, Natchez Chamber of Commerce vs. La. & Ark., No. 8920, Same vs. Ark., La. & Gulf; and No. 9360, Same vs. Ark. & La. Mid. It orders that, in instances where, by reason of combinations on the Mississippi River crossings, rates are established by competing routes between points involved in the before mentioned proceeding, which are lower than the rates approved in those proceedings for application between points in western Louisiana and between Natchez and points in western Louisiana, the carriers, in those instances in which the distance via their lines is not less than 15 per cent greater than the distance between the same points via the line over which the lower combination on the Mississippi River crossing is in effect, are authorized to establish and maintain the same rates between the same points as are contemporaneously in effect via the rate-making route, and to maintain higher rates from, to and between intermediate points; provided that the rates at the intermediate points shall not exceed the distance scale of rates or other rates prescribed in the proceedings; provided also that the rates between any intermediate points not farther distant one from the other than the distance between the competitive points shall in no case exceed the rates between the competitive points; and provided, further, that the rates at the intermediate points shall in no case exceed the lowest combination.

The second fourth section order (No. 7743), pertaining to commodities between Vicksburg and points in western Louisiana, also between points in western Louisiana, covers commodities mentioned in 58 I. C. C., 610, between Vicksburg and destinations in western Louisiana, and also between points in western Louisiana, via all routes. That order also covers departures caused by combinations on the river.

An additional order on No. 8845, Natchez Chamber of Commerce vs. La. & Ark. et al., postpones the effective date of the order in No. 8845, date August 12, in so far as that order might otherwise cover sand and gravel for the use of the United States, state or municipal governments in the construction of "good roads" until a further order of the Commission. In other words, the railroads by this additional order, are authorized to make rates on road building materials for governmental bodies without regard to the Commission's order in the Natchez cases.

### PERMISSION TO BUY RAILROAD

In Finance Dockets Nos. 1075 and 1076, the Norfolk & Western has asked the Commission's permission to buy four bits of railroad constituting the bridge, and approaches to it, across the Tug River, owned by its subsidiaries, the Tug River & Kentucky and the Williamson & Ponk Creek railroads, the stock of which is all owned by the applicant. The object is to simplify

the corporate bookkeeping. The four roads owned by the two companies are less than a mile long. The first mentioned road is to be acquired at a cost of $53,744 and the second at a cost of $71,994, all on paper. Parts are in Kentucky and parts in West Virginia.

## POSITIONS WANTED OR OPEN

GOOD TRAFFIC MEN ARE MORE THAN EVER IN DEMAND and THE TRAFFIC WORLD is the logical medium for getting the men and the positions in touch with each other. The rates for classified advertisements are as follows: First insertion, $1.00 per line; minimum charge, $3.00; succeeding insertions, per line, 50c; 10 words to the line; numbers and abbreviations counted as words; 6 point type; payable in advance. Answers to keyed advertisements forwarded free and all correspondence held in strict confidence. The TRAFFIC WORLD, 418 South Market Street, Chicago, Ill.

WANTED—Position as Traffic Manager, railroad experience; would like to engage in the industrial field—lumber or coal preferred. Address O. E. N. 295, Traffic World, Chicago.

WANTED—Position of Assistant Traffic Manager; seven years' local and general office railroad experience; rates, claims, tracing, railroad records; accounting experience, executive ability, college graduate. Conscientious, ambitious, seeking future. Address H. E. S., Traffic World, Chicago.

POSITION WANTED—Young man well versed all phases traffic work, with many years' experience, as industrial Traffic Manager; desires connection with progressive concern. Best of references. Address N. O. S. 291, Traffic World, Chicago.

POSITION WANTED—Industrial Traffic Manager, at present assistant traffic manager extensive corporation, desires change. Qualified to handle questions of rates before Commission, experienced export, import procedure, proven executive ability and efficient handling claims. Address U. T. T. 287, Traffic World, Chicago.

WANTED—Position as Secretary-Traffic Manager of Chamber of Commerce. Now Secretary-Traffic Manager Southern city over thirty thousand. Seven years' secretarial, ten years' railroad rate making experience. Experienced and qualified in conducting hearings before Interstate Commerce Commission. Thirty-six years old, married. Prefer location south or southwest. Best references as to character and general ability. Address M. R. B., Traffic World, Chicago.

WANTED—Position as rate clerk or assistant traffic manager. Young, competent, tenchnically trained, railroad experience. Efficient in rates, claims, etc. References. Personal interview. Address H. S. 299, Traffic World, Chicago.

WANTED—Prominent Traffic Bureau, in existence nine years, serving over twenty-five nationally known concerns, wishing to increase the scope of its work, desires to get in touch with first-class traffic men who could hold responsible positions and make a small investment in the corporation. Excellent opportunity for the trained man. Address "BAC," Traffic World, Chicago.

POSITION WANTED—Certified Traffic Manager available, experienced railroad, commercial; technical, legal, practical, record of achievement. Young, ambitious. Address E. E. D. 197, Traffic World, Chicago, Ill.

POSITION WANTED—By young man with twelve years' railroad and industrial traffic experience. At present employed as Traffic Manager by large milling concern. Thorough knowledge of freight rates, Interstate Commerce Commission rulings and procedure, milling in transit, rate adjustments, efficient handling of claims, etc. Best of references from present and past employers. Married. Address "M," The Traffic World, Chicago, Ill.

## CONSTRUCTION OF COMBINATIONS

*The Traffic World Washington Bureau*

Director Hardie, of the Commission's Bureau of Traffic, issued a statement, November 5, with respect to combination rules on commodities subject to specific increases under General Order No. 28. The statement is explanatory of Special Permission No. 50938, put out by the Commission November 3, relating to rules for constructing combination rates. (See Traffic World, November 6, p. 846.) Director Hardie's statement follows:

Since August 26 some uncertainty has existed as to combination rates subject to "combination rules" in Eugene Morris' tariff 228, I. C. C. U. S. 1, and to combination rules in individual tariffs applying upon petroleum and other commodities. Increases somewhat in excess of those contemplated by the opinion of the Commission in Ex Parte 74 resulted as to rates subject to tariff 228, whereas in the case of many existing combination rules on petroleum oil and other commodities either no increase or less increase than was intended by the opinion of the Commission accrued.

The attention of carriers having been called to this subject by the Commission, an understanding has been reached under which applications have been filed by them with the purpose of making combination rules more definite and bringing about in all cases substantially the increases intended. Special Permission No. 50938 has been this day issued by the Commission authorizing carriers to file tariffs on 5 days' notice providing substantially as follows:

(a) A revision of all rates and charges in Eugene Morris' combination tariff No. 228, increasing all deductions therein provided to the extent of 33 1-3 per cent. This will substantially have the effect of eliminating the excess increase resulting from the tariff as now worded.

Concrete examples follow:

Rate on brick August 25, 1920, point A to point C, 15 cents, composed of rate A to B, 8 cents, plus rate B to C 9 cents. Rate A to B increased under Ex Parte 74 25 per cent, becomes 10 cents. Rate B to C increased 33 1-3 per cent, becomes 12 cents. The combination through rate from A to C, effective August 26, became 8 cents, plus 10 cents, plus 2 cents, or 20 cents. Under the revised tariff 228 the deduction of 2 cents is to be increased 33 1-3 per cent and under the rule for disposition of fractions becomes 2½ cents. The combination through rate from A to C will therefore become 7½ cents, plus 9½ cents, plus 2½ cents, of 19½ cents.

Rate on lumber August 25, 1920, point A to point C, 38 cents, composed of rate A to B, 10 cents, plus rate B to C, 30 cents. Rate A to B, increased under Ex Parte 74 25 per cent, becomes 12½ cents. Rate B to C, increased 33 1-3 per cent, becomes 40 cents. Combination through rate from A to C, effective August 26, became 10 cents, plus 35 cents, plus 5 cents, or 50 cents, which is determined by applying to the August 26 rate of 12½ cents A to B the table shown in Section 5 of Agent Kelly's tariff 228, deducting 5 cents from the factor B to C and adding 5 cents to the sum of such reduced factors. Under the revised tariff now authorized the deductions are to be increased 33 1-3 per cent, becoming 6½ cents and 3½ cents, respectively. Therefore, the combination through rate from A to C will become 9 cents, plus 33½ cents, plus 6½ cents, or 49 cents.

Similar revision will result as to rates on brick, lime, cement, cotton, live stock and all other commodities subject to Agent Morris' tariff 228.

(b) A revision of all existing combination rules published in individual tariffs, eliminating all reference to June 24, 1918, or other previous dates and providing that combination through rates shall be constructed by deducting from each of the current factors the amount of increase authorized by General Order 28 increased by 33 1-3 per cent and the addition to such reduced factors of a like amount but once.

Illustrations of rates on petroleum follow:

Rates in effect June 24, 1918, as follows: A to B, 5 cents; B to C, 10 cents; through combination rate, 15 cents.

Let it be assumed that each factor was increased by the Director-General 4½ cents per 100 pounds and a combination rule established reading as follows:

"When the total charges on a through shipment are constructed on a combination of separately established rates applying to and from junction points, first determine the through combination rates in effect on June 24, 1918, and then increase such combination of rates 4½ cents per 100 pounds."

In that event the rates became A to B 9½ cents, B to C 14½ cents, combination through rate 5 cents, plus 10 cents, plus 4½ cents, or 19½ cents.

Effective August 26, assuming that the rates in question be in territory subject to a 35 per cent increase, rate A to B became 13 cents, B to C 19½ cents, but the combination through rate remained 5 cents, plus 10 cents, plus 4½ cents, or 19½ cents.

Under the revised basis the 4½ cent deduction will be increased 33 1-3 per cent to 6 cents and the rates will become A to B 13 cents, B to C 19½ cents, and the combination through rate 7 cents, plus 13½ cents, plus 6 cents, or 26½ cents.

Let us assume that instead of the combination rule above shown there is now a rule as follows:

"When the total charges on a through shipment are constructed on a combination of separately established rates applying to and from junction points, first deduct from the rate factor named in this tariff 4½ cents per 100 pounds and add thereto the rates in other tariffs as in effect June 24, 1918, and to the sum of such rates add 4½ cents per 100 pounds."

In that event the rates in effect prior to August 26, 1920, were the same as above shown, but on that date the following basis became effective: A to B 13 cents, B to C 19½ cents, combination through rate 8½ cents, plus 10 cents, plus 4½ cents, or 23 cents.

Under the revised basis the following will result: A to B 13 cents, B to C 19½ cents, combination through rate 7 cents, plus 13½ cents, plus 6 cents, or 26½ cents.

### Cancellation of Combination Rules

The attention of all concerned is also called to the fact that it is the intention of carriers at the end of six months after the revisions above outlined are made effective to withdraw and cancel all combination rules, including those in the Morris tariff. It is, however, understood that upon reasonable request therefor carriers will, before the expiration of the six months' period, publish specific joint through rates or proportional rates to and from junctions to provide substantially the rates now obtained by the use of combination rules.

In order that no inconvenience may result from the cancellation of the combination rules, the undersigned desires to direct the attention of all shippers of the commodities in question to the importance of complying with the request of the carriers for information as to situations where the publication of joint through rates or proportional rates is justified by the amount of traffic moving or in contemplation. It should be clearly understood that requests for joint rates or proportional rates should in the first instance be filed with the initial or publishing carriers or agents and not with the Commission, though this should not be construed as denying to anyone the right to bring disputed matters before the Commission after their having been presented to the proper agents of the carriers.

It is hoped that the revision of combination rules soon to be made effective under Special Permission 50938 will clear up all existing confusion as to the correct tariff rates and will materially assist everyone concerned by reducing rates now in excess of those intended by Ex Parte 74 and increasing rates as to which the full increase was not made on August 26, 1920.

## RICHMOND SWITCHING CHARGES

*The Traffic World Washington Bureau*

The decision of the Interstate Commerce Commission in the case of the Richmond Chamber of Commerce vs. Seaboard Air Line et al. (44 I. C. C., 455), relating to the absorption of switching charges by the defendant carriers at Richmond, Va., was upheld by the United States Supreme Court, November 8, when it affirmed the federal court in the Eastern District of Virginia for denying the petition of the appellant rairoad companies for an injunction prohibiting enforcement of the Commission's order. The number of the Supreme Court's decision is No. 27.

The Seaboard Air Line Railway Company, the Seaboard Air Line Railway, the Southern Railway Company and the Atlantic Coast Line Railroad Company brought the jurisdiction proceedings in the Virginia federal court against the United States of America, the Interstate Commerce Commission, and the Richmond Chamber of Commerce.

"The Commission's order was made upon a petition of the Richmond Chamber of Commerce averring that the practice of the railroads was discriminatory and unlawful and violative of Section 2 of the act to regulate commerce," the Supreme Court said. "From the facts found by the Commission it appears that the appellant railroad companies bring freight from the south to industries in the switching limits of that city. If the freight is received at a point served by any two or more of the carriers, the switching charge is absorbed if the freight be delivered on the line of either. But if the delivery is to an industry served only by a non-competitive carrier the switching charge is not absorbed.

"The order complained of directed the three carriers to cease and desist on or before August 1, 1917, and thereafter to abstain from absorbing switching charges on certain interstate carload freight at Richmond, Va., while refusing to absorb such charges on like carload shipments for a like and contemporaneous service under substantially similar circumstances and conditions, such practices having been found in a supplemental report to be unjustly discriminatory and unlawful within Section 2 of the act to regulate commerce."

The district court denied the application for an injunction and ordered that the petition be dismissed. The contention of the appellants was that the transportation was not a like and contemporaneous service of a like kind of traffic under substantially similar circumstances and conditions.

"We are of the opinion that the Commission was correct in regarding the service in question as a like and contemporary service rendered under substantially similar circumstances and conditions and amply sustained as a matter of law in Wight vs. United States, 167 U. S. 12, and Interstate Commerce Commission vs. Alabama Midland Railway Company, 168 U. S. 144," the Supreme Court said.

"The principle established in these cases is that the statute aims to establish equality of rights among shippers for carriage under substantially similar circumstances and conditions, and that the exigencies of competition do not justify discrimination against shippers for substantially like services.

"Moreover the determination of questions of fact is by law imposed upon the Commission, a body created by statute for the consideration of this and like matters. The findings of fact by the Commission upon such questions can be disturbed by judicial degree only in cases where their action is arbitrary or transcends the legitimate bounds of their authority.

"The Commission did not hold that switching charges must be always the same, but did hold that they must be alike where the service was rendered under substantially similar circumstances and conditions. The practice condemned by the Commission, as its report and order show, was that of absorbing switching charges only when the line-haul carrier competes with the switching line; and refusing to absorb such charges when the switching line does not compete with the line-haul carrier; this the Commission held was discrimination within the meaning of Section 2 of the act to regulate commerce.

"We find no occasion to disturb this ruling as arbitrary in character or beyond the authority of the Commission. We find no merit in the contention that the order of the Commission was too vague and uncertain to be enforced."

### LOAN TO SHERWOOD RAILWAY

Informal announcement was made by the Commission, November 9, that it had approved a loan of $29,000 to the Sherwood Railway Company to meet maturing indebtedness and to provide itself with additions and betterments.

## SUSPENDS GRAIN TARIFF

*The Traffic World Washington Bureau*

In I. & S. Docket No. 1233, the Commission, on November 9, suspended from November 10 until March 10, the proposed elimination of the routing of grain and grain products to Trunk Line territory via the C. C. C. & St. L. Ry. through Indianapolis, from points on the Toledo, St. Louis & Western east of the Indiana-Illinois state line, provided in Supplement No. 16 to Kelly's I. C. C. No. 839, resulting in the application of combination rates. The following shows the present and proposed rates in cents per 100 pounds on grain from Cayuga, Ind. via the C. C. C. & St. L. Ry. stopped at Indianapolis for transit:

| To | Present | Proposed |
|---|---|---|
| New York, N. Y. | 44½ | 54½ |
| Philadelphia, Pa. | 42½ | 52½ |
| Baltimore, Md. | 41½ | 51½ |

## MINIMUM WEIGHT ON GRAIN, ETC.

*The Traffic World Washington Bureau*

The first of probably many conferences on rates and minima, between representatives of the federal and state commissions, will be held at St. Louis, Hotel Jefferson, on November 15, with a view to coming to an understanding in respect of minima on grain and grain products (see Traffic World, Nov. 6). Existing minima expire on December 31. Carriers have asked then for indefinite extension. They apply both state and interstate, because they were established by the Railroad Administration. State commissions have made representations to the federal commission as to the desirability of uniformity and the Interstate Commerce Commission has designated Director Hardie of the Service Bureau to hold conferences on that subject.

Director Hardie on Nov. 4 issued a notice of the St. Louis conference as follows:

Existing minimum weights on grain and grain products upon interstate traffic are in effect by virtue of Special Permission 50450 of the Commission, and expire December 31, 1920, the tariffs containing provisions that on January 1, 1921, the minimum weights in effect prior to November 3, 1919, will again become effective. Minimum weights similar to those applicable upon interstate traffic now apply upon intrastate traffic in many states by action of state commissions.

Applications have been received by the Commission from the carriers, some seeking authority to continue the present minimum weights indefinitely beyond December 31st and others to re-establish a minimum weight of 60,000 pounds on grain products and otherwise continue the present minima.

The attention of this Commission has been called by state commissions to the desirability of uniformity of regulations in such matters between state and interstate traffic and the suggestion made that a conference be held between representatives of the state commissions and of this Commission relative to the provisions to be approved for use after December 31st, 1920.

Therefore, before acting upon the carriers' applications, the Commission has decided to call a conference of state commissions, shippers, carriers and others interested to discuss the situation at the Jefferson Hotel, St. Louis, Mo., commencing at 10 a. m. Monday, November 15th, at which the Commission will be represented by the undersigned.

All interested shippers and carriers are requested to be represented, prepared to discuss the matter orally, and if desired to present written statements outlining their views with respect to the matters in issue.

## FT. WORTH BELT CHARGE ABSORPTION

*The Traffic World Washington Bureau*

Representatives of Armour & Co., Swift & Co. and the Fort Worth Belt Railway appeared before the Commission's suspension board November 4 asking the suspension of traiffs filed by trunk lines serving Fort Worth that propose limiting the absorption of the charges of the belt line so the through rates of the trunk lines and the belt railroad would be only 35 per cent higher than on August 5, the day before the advanced rates permitted by the Commission's decision in Ex Parte No. 74 became operative. The effect of that limit on absorptions is to make the through rates of the belt line and the trunk lines 85 cents a car higher on dead freight and $1.35 a car higher on live stock than they would be were the total advance limited to 35 per cent.

This situation has been brought about by the belt road filing tariffs with rates high enough to allow it a return of 5.5 per cent on the property devoted to transportation and the refusal of its trunk line connections to shrink their rates enough to make the through charge on the separately established factors equal to 35 per cent more than they were on August 25.

In its final analysis, the protestants said, it was a case of disagreement between carriers as to the divisions. The belt road is owned by the packers represented at the hearing. It is, however, a full-fledged common carrier, held under federal control during the whole period.

Attention was called, incidentally, to the fact that in a short time the packers will own neither the belt railroad nor the stock yards and oil plants it serves, and that it must have compensation enough to warrant the new owners keeping it going as the connecting link between the trunk lines and the manufacturing plants. While the packers continue to own it, the fact that, for a certain period, it might not earn anything on the investment would not imperil its operation. When, however, they no longer own it, the question of revenue will be important.

Coincident with the conference on the tariffs, the packers filed a joint complaint against the belt and trunk lines on the ground that the through charges that would result from the tariffs of the belt line and the trunk lines would be unjust and unreasonable. They set forth that, in their opinion, the Commission should take up the matter and prescribe just and reasonable rates and divisions, so as to permit the belt line and the trunk lines to earn the percentage of return declared by the new transportation act to be their due. They did not pretend to say, in their complaint whether the trunk lines would be obtaining too much or too little. Their point was that, as shippers, they were entitled to joint through rates that would not be more than 35 per cent higher than the old rates.

## L. & H. R. STOCK ISSUE

*The Traffic World Washington Bureau*

The Lehigh and Hudson River Railway Company has applied to the Commission for authority to issue capital stock in the sum of $2,987,000. The company proposes to dispose of the stock at not less than par and to apply the proceeds to the payment of the mortgage debt of the company of $2,587,000 and to pay all debenture bonds in the sum of $400,000. Both debts were due July 1, 1920, it is set forth.

The total authorized stock of the applicant is given as $5,000,000, of which amount $1,720,000 has been issued and is outstanding. The following corporations are owners of the applicant's stock to the amount indicated: Central Railroad Company of New Jersey, 2,070 shares; Delaware, Lackawanna & Western, 2,149 shares; Erie Railroad Company, 2,081 shares; Lehigh Coal & Navigation Company, 6,445 shares; Lehigh Valley Railroad Company, 2,083 shares; Pennsylvania Railroad Company, 2,079 shares.

The applicant states that some or all of the stockholding corporations will participate in the issuance of the securities to be issued or in the assumption of obligation or liability with respect thereto, and to pay therefor at the par value thereof, and, in addition, to purchase a portion of the stock not allotted, and upon such purchase to pay therefor not less than its par value.

### N. Y., N. H. & H. BONDS

Authorization for the issue of its first and refunding mortgage gold bonds in amounts not to exceed $95,000,000 is asked by the New York, New Haven and Hartford Railroad Company in a petition filed with the Commission. Of the $95,000,000, the applicant states, an amount not exceeding $80,000,000 will be issued for the purpose of pledging the same, in part or in all, as collateral security for a note or notes to be given to the United States under authority of Section 207 (g) of the transportation act, for the purpose of funding or refunding its indebtedness incurred during the period of federal control. The applicant states that it is impossible at the present time to state the exact amount of said indebtedness, but that it is estimaed at $60,000,000. The remaining $15,000,000 of bonds will be pledged, with the approval of the Commission, in part or in all, as collateral security for a loan of $8,130,000 from the $300,000,000 government revolving fund, for which application has been made.

The bonds to be pledged for the funding of the indebtedness incurred during federal control will bear 6 per cent interest and will mature in ten years from date of issue. The other bonds will bear 6 per cent interest and will mature in fifteen years from date of issue, according to the petitioner.

### COMMISSION ORDERS

The commission has re-opened, for further argument, No. 10704, Tide Water Oil Company vs. Central of New Jersey et al., the oil company desiring to be heard further about the situation at its plant by reason of its ownership of an industrial common carrier to which the Commission recently made some allowances.

The West Coast Lumberman's Association has been allowed to intervene in No. 11866, Omaha Chamber of Commerce, traffic bureau, vs. Chicago & North Western et al.

The Commission has re-opened No. 10149, Board of Railroad Commissioners of Iowa vs. Minneapolis & St. Louis et al., with a view to determining what would be a reasonable and equitable adjustment of rates on lumber, from Des Moines to the Mississippi river, applicable on traffic to points east of the Illinois-Indiana state line, or for export.

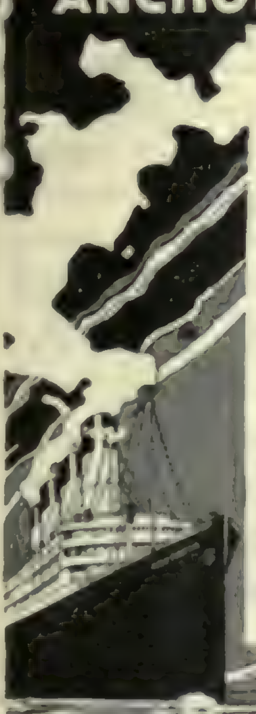
The effective date of the Commission's order in No. 9190, Murfreesboro Board of Trade et al. vs. L. & N. et al., so far as class rates are concerned, has been fixed at December 1. The class rates are to be published on not less than fifteen days' notice.



To Flint
To Saginaw
To Lansing
To Pontiac
To Grand Rapids
To Jackson
DETROIT
THE HOME OF THE MOTOR CAR INDUSTRY
To Port Huron
To Walkerville
To Windsor
LIBERTY HIGHWAY CO
TOLEDO
THE HUB







MITCHELL MOTORS CO., Inc.
RACINE, WIS., U. S. A.

## C. B. & Q. FINANCIAL PLANS

*The Traffic World Washington Bureau*

Authority to capitalize $60,000,000 of its surplus and distribute the additional stock pro rata among its stockholders, and to issue $109,000,000 of 6 per cent first and refunding mortgage bonds is asked by the Chicago, Burlington & Quincy Railroad Company in a petition filed with the Interstate Commerce Commission. A hearing on the application will be held November 22, before Director W. A. Colston at Washington.

If the application with respect to capitalization of part of its surplus is granted, the C. B. & Q. states, there will remain a corporate surplus of $101,781,197. On December 31, 1919, th applicant states that it had a corporate surplus of $241,781,197 and that its property investment as of that date was $535,210,890. Depreciation on equipment to the extent of $48,514,239 has been charged, it states.

Ninety-seven per cent of the stock of the C. B. & Q., according to the petition, is owned by the Great Northern and the Northern Pacific.

Reimbursement of the applicant's treasury for expenditures heretofore made on additions and betterments is desired to be accomplished by the bond issue of $109,000,000, the petition states. Of the $109,000,000 of bonds, $80,000,000 of bonds or the proceeds thereof will be held in the company's treasury, to be used for any lawful purpose, including dividend purposes. The balance will be disposed of only for future additions and betterments after further application to the Commission, it is stated.

The total capitalization of the C. B. & Q. is $278,889,100, the applicant states, the outstanding capital stock being $110,839,100, and the funded debt, $168,050,000.

It is averred in the petition that it is "an absolute necessity to its future expansion and growth as a railroad system to issue a new mortgage which will provide for financing its additions and betterments for a considerable period." Because the laws of the principal investment states for corporate securities provide that in order to be legal investments for savings banks, etc., bonds shall not exceed three times the capital stock of the issuing corporation, the applicant says, it is imperative in order to make a refunding mortgage and provide for adequate future financing, that the applicant increase its capital stock.

"By the proposed increase," the Burlington states, "to approximately $170,000,000, applicant will have under the laws of such investment states a basis for a bond issue up to approximately $510,000,000 instead of approximately $332,000,000, as at present. Five hundred and ten million dollars is the necessary limit to enable applicant to finance its necessary additions and betterments for a reasonable term of years.

"Since July 1, 1901, applicant has invested in additions and betterments to its railway operating property the sum of $189,070,776.12 out of earnings from operation which justly belonged to its stockholders, at least to the extent of two-thirds thereof, or more. For the most part these additions and betterments added to the fair value of applicant's property and to the earning capacity thereof fully in proportion to the expenditure, only a small portion of the expenditure having been in non-revenue producing additions and betterments. During this period applicant has not increased the aggregate of its bonds or stock, substantially financing all its improvement and betterment work out of earnings.

"This policy has resulted in the abnormal capitalization heretofore shown and is a policy not just to the stockholders and of which they oppose the continuance."

From July, 1901, to December 31, 1919, the application states, the company has invested from earnings in additions and betterments, road extensions, retiring bonded debt, purchase of securities of other companies and other items properly chargeable to capital account, $191,348,478.49, which has not been capitalized, and its net income applicable to dividends for the past ten and one-half years has aggregated $202,490,286.25 or an average per year of $19,284,789.17.

"Notwithstanding said large amounts of net income which might have been distributed to the stockholders at the discretion of the directors the average of all dividends paid to stockholders on the very low capitalization mentioned, for the period of July 1, 1901, to June 30, 1920, was only 8.51 per cent on the par of stock and on property investment during the same period in excess of bonded debt 3.916 per cent," the applicant states.

"The physical valuation now being carried on by the Bureau of Valuation of the Interstate Commerce Commission will support a value clearly in excess of the property investment above stated.

"A policy clearly recognized in the transportation act, 1920, is to bring all the railways eventually to substantially the same principle of capitalization, which is to be as nearly as practicable the value of their respective railway operating properties, so that the cost of transportation, as between competitive systems, and as related to the values of the properties, through which the service is rendered, shall be the same so far as practicable, so that the railways can employ uniform rates in the movement of competitive traffic and under efficient management earn substantially the same rate of return upon the value of their respective railway properties.

"Applicant's present interest and sinking fund charges amount approximately to $7,250,000 per annum, and the issue of $80,000,000 bonds as proposed would increase this amount by $4,800,000 per annum. During the five and one-half years from July 1, 1914, to December 31, 1919, the average annual net income yielded by applicant's railways, plus applicant's other income, was $17,324,703.73 in excess of the proposed new interest requirements, which is a large and safe margin above all dividend requirements, in respect of the proposed total $170,000,000 of capital stock.

"The annual net income available for dividends as shown by the above statement, and present rate and traffic conditions in applicant's territory, prove that by the most conservative estimate the additional securities proposed will not impair applicant's credit or its ability adequately to serve the public as a common carrier.

"The unduly low capitalization of applicant as compared with other railroads in the same territory, and as compared with its property investment, had led to a misunderstanding on the part of the public as to the rate of return on fair value of property shown by applicant's earnings.

"The partial capitalization of applicant's surplus now proposed is just in relation to the capitalization of said other companies with reference to applicant's fair value and is in furtherance of the policy of the transportation act."

## TRAFFIC CLUBS

(The following list of traffic clubs will be published from time to time. We ask that readers notify us of any errors or of any changes or additions of which they have any knowledge.)

Akron Traffic Association. S. J. Witt, Pres.; H. L. Sovacool, Secy.

Baltimore—Traffic Club of Baltimore. W. W. Tingle, Pres.; C. C. Kailer, Secy.

Battle Creek (Mich.) Traffic Club. E. C. Nettels, Pres.; Eugene Wallace, Secy.-Treas.

Boston, Mass.—The Association of Railway and Steamboat Agents of Boston. Willard Massey, Pres.; S. A. Colpitts, Secy.-Treas.

Brooklyn Traffic Club. P. L. Gerhardt, Pres.; C. A. Schleicher, Secy.

Buffalo Industrial Traffic Club. E. J. Sheridan, Pres.; W. J. McKibbin, Secy.

Buffalo Transportation Club. E. E. Tanner, Pres.; F. J. O'Connor, Secy.

Chicago Traffic Club. E. L. Dalton, Pres.; E. S. Buckmaster, Secy.

Cincinnati.—Traffic Club of the Chamber of Commerce. W. H. Lockwood, Chairman; Sam Herndon, Secy.

Cleveland Traffic Club. C. T. Stripp, Pres.; F. A. Gideon, Secy.

Columbus, Ohio.—Traffic Club of the Columbus Chamber of Commerce. W. E. Page, Pres.; C. L. Kelly, Secy.

Cortland, N. Y.—Industrial Traffic Club of Cortland. H. B. Darling, Chairman; H. F. Johnson, Secy.

Dayton Traffic Club.—J. W. Cobey, Pres.; W. E. Boyer, Secy.

Decatur (Ill.) Transportation Club. R. L. Rees, Pres.; T. C. Burwell, Secy.

Denver Commercial Traffic Club. T. A. Dinkel, Pres.; C. J. Hotchkiss, Secy.

Detroit Transportation Club. H. H. Hamill, Pres.; T. R. Cochrane Secy.

El Paso Traffic Club. S. H. Wilson, Pres.; A. U. Tadlock, Secy.-Treas.

Erie Traffic Club. H. W. Sherwood, Pres.; M. W. Eismann, Secy.

Flint (Mich.) Traffic Club. A. V. Marti, Pres.; A. Nelson, Secy.

Fort Wayne, Ind. Traffic, Transportation, and Waterways Bureau of the Chamber of Commerce. H. E. Fairweather, Chairman; E. C. Miller, Vice-Chairman.

Fort Worth Transportation Club. E. C. Price, Pres.; E. E. Wyatt, Secy.

Freeport, Ill.—Greater Freeport Traffic Club. W. H. Jenner, Pres.; F. F. Pepperdine, Secy.

Grand Rapids Traffic Club. E. L. Ewing, Pres.; J. C. Quinlan, Secy.

Green Bay (Wis.) Traffic Club of the Green Bay Association of Commerce. F. Hurlbut, Pres.; W. J. LaLuzerne, Secy.-Treas.

Holyoke, Mass.—Shippers' Round Table of Western Massachusetts Traffic Men. C. E. Mohan, Chairman; W. B. Rogers, Secy.

Houston Traffic Club. F. L. Clements, Pres.; E. L. Williams, Secy.

Indianapolis Transportation Club. F. B. Humiston, Pres.; T. A. Lamoureux, Secy.

Jackson (Mich.) Traffic Club of the Jackson Chamber of Commerce. W. P. Hobart, Pres.; H. A. Plummer, Secy.

Jacksonville Traffic Club. James F. Mead, Pres.; F. C. Sawyer, Secy.-Treas.

Jamestown, N. Y.—Traffic Club of the Jamestown Board of Commerce. J. H. Dasher, Pres.; H. W. Chapman, Secy.

Kansas City Traffic Club. G. I. Tompkins, Pres.; Alfred A. Wild, Secy.

Lansing (Mich.) Traffic Club. N. W. Secor, Pres.; J. T. Ross, Secy.-Treas.

Los Angeles Transportation Association. C. G. Krueger, Pres.; C. V. Means, Secy.

Louisville Transportation Club. C. R. Long, Pres.; G. A. Perry, Secy.

Memphis Traffic and Transportation Club. J. M. Beley, Pres.; L. E. McKnight, Secy-Treas.

Milwaukee Traffic Club. H. W. Ploss, Pres.; F. T. Fultz, Secy.

Minneapolis Traffic Club. F. B. Townsend, Pres.; W. W. Gibson, Secy.

Newark Traffic Club. John Enstice, Pres.; A. Rennie, Secy.

New England Traffic Club, Boston. William Garcelon, Pres.; C. A. Anderson, Secy.

New York Traffic Club. F. E. Signer, Pres.; C. A. Swope, Secy.

New York, N. Y.—Traffic Club of the Queensboro Chamber of Commerce. E. J. Tarof, Pres.; P. W. Moore, Secy.

Omaha—Traffic Managers' Committee, Omaha Chamber of Commerce. C. E. Childe, Chairman; W. F. Crosby, Secy.

Peoria Transportation Club. C. H. Gillig, Pres.; Arthur Maedel, Secy.

Philadelphia Traffic Club. J. A. Tait, Pres.; W. H. Montgomery, Secy.

Philadelphia—Commercial Traffic Managers of Philadelphia. W. B. Grieves, Pres.; T. Noel Butler, Secy.

Pittsburgh Traffic Club. W. W. Blakely, Pres.; F. A. Layman, Secy.

Pittsburgh Traffic and Transportation Association. H. N. Holdren, Pres.; A. C. Schweitzer, Recording Secy.

Portland Transportation Club. E. M. Burns, Pres.; W. O. Roberts, Secy.

Providence, R. I.—Traffic Club of the Providence Chamber of Commerce. E. E. Salisbury, Chairman; E. C. Southwick, Secy.

Ridgeway, Pa.—Traffic Club of Elk County. W. H. Grant, Pres.; C. L. Bishop, Secy.

Roanoke (Va.) Traffic Club of the Association of Commerce. H. S. Dance, Pres.; J. T. Preston, Secy.

Rochester, N. Y.—Traffic Council of the Rochester Chamber of Commerce. H. B. Cash, Chairman; C. A. Higbie, Secy.

Salt Lake City Transportation Club. A. R. McNitt, Pres.; R. E. Rowland, Secy.

San Francisco Transportation Club. A. A. Moran, Pres.; R. G. Guyett, Secy.

San Francisco Traffic Club. W. T. Bozeman, Pres.; L. N. Bradshaw, Secy.

Scranton, Pa.—Traffic Club of the Scranton Board of Trade. T. R. Brooks, Chairman; F. J. Hoffman, Secy.

Seattle Transportation Club. F. W. Graham, Pres.; E. W. Mosher, Secy.-Treas.

Sioux City, Ia.—Traffic Managers' Club of Sioux City. J. P. Haynes, Pres.; R. R. Wigton, Secy.

South Bend Traffic Club. F. S. Montgomery, Pres.; G. S. Hess, Secy.-Treas.

Spokane Transportation Club. V. G. Shinkle, Pres.; R. W. Franklin, Secy.

St. Joseph Traffic Club. R. A. Ferguson, Pres.; T. J. Slattery, Secy.

St. Louis Traffic Club. A. D. Aiken, Pres.; J. R. Bell, Secy.

Syracuse Traffic Efficiency Club. C. B. Berry, Pres.; W. J. O'Neil, Secy.

Toledo Transportation Club. W. O. Holst, Pres.; J. J. Lynch, Secy.

Trenton (N. J.) Traffic Club. M. D. Warren, Pres.; F. J. Quick, Secy.

Troy, N. Y.—The Traffic Club, Inc., of Troy. W. J. Cipperly, Pres.; R. H. Bibb, Secy.

Tulsa Transportation Club. L. M. Klein, Pres.; R. V. Miller, Secy.

Waco Traffic Club. G. H. Zimmerman, Pres.; R. G. Hyett, Secy.

Washington Traffic Club. C. E. Phelps, Pres.; J. T. M. Duvall, Acting Secy.

Wheeling (W. Va.) Traffic Club. W. H. Higgins, Pres.; A. W. Dowler, Secy.

Wichita Traffic Club. G. P. Nissen, Pres.; H. G. Watts, Secy.

Worcester (Mass.) Traffic Association. H. A. Rousseau, Pres.; J. H. Lane, Secy.

York (Pa.) Traffic Club. R. H. Immel, Pres.; J. F. Baird, Secy.-Treas.

## Digest of New Complaints

No. 11913. George C. Holt and Benjamin B. Odell, as receivers of Ætna Explosives Co., Inc., New York, vs. B. & O. et al.
Unjust, unreasonable and excessive rates on blasting caps from Port Ewen, N. Y., to Wilsonburg, W. Va., because rate charged was in excess of first-class rate. Asks reparation down to basis of first-class rate.

No. 10676. Mitsui & Co., Ltd., vs. Director General et al.
Petition for rehearing by Director General.

No. 11918. E. I. DuPont de Nemours & Co., vs. Pennsylvania et al.
Unjust and unreasonable rates on sulphuric acid from Newark to Carney's Point and Gibbstown, N. J., during period from July 3, 1918, to January 7, 1920. Asks reparation in sum of $3,562.93.

No. 11919. Same vs. J. B. Payne, as agent.
Unjust and unreasonable rates on mixed or nitrating acid from Hopewell, Va., to Arlington, N. J. Asks for reparation down to basis of subsequently established rate of 22½c.

No. 11920. Same vs. Payne, as agent.
Unjust and unreasonable rates on sulphuric acid in tank cars from Hopewell, Va., to Gibbstown, N. J. Asks for reparation down to basis of subsequently established rate of 22½c.

No. 11921. Solar Refining Co. of Louisiana, Shreveport, La., vs. J. B. Payne, as agent.
Unjust and unreasonable, unduly prejudicial and preferential rates on one tank car of gasoline from Westlake, La., to Louisville, Ky. Asks for reparation.

No. 11922. Joseph B. Schanck et al., trading as Schanck, Hutchinson & Field, Hightstown, N. J., vs. Pennsylvania et al.
Unjust and unreasonable and unjustly discriminatory rates on rye from Hightstown, N. J., to New York City. Also on wheat from Robbinsville, N. J., to New York City. Asks for reparation.

No. 11923. Forsythe Leather Co., Wauwatosa, Wis., vs. J. B. Payne, as agent, et al.
Unjust and unreasonable rates on glue stock from Wauwatosa, Wis., to Carrollville, Wis. Asks for reparation.

No. 11924. Oliphant-Johnson Coal Co. et al., Indianapolis, Ind., and Vincennes, Ind., vs. W. J. Jackson, receiver C. & E. I. et al.
Unjust and unreasonable rates on coal from Seifert, Ind., to Sandusky, O. Asks for just and reasonable rates and reparation of $3,000.

No. 11925. Same vs. P. C. C. & St. L. et al.
Unjust, unreasonable, unduly preferential and prejudicial rates on coal from Turner, Ind., to Sandusky, O. Asks just and reasonable rates and reparation in sum of $600.

### NEW YORK CENTRAL BONDS

The New York Central Railroad Company has applied to the Commission for authority to issue $7,000,000 of applicant's refunding and mortgage improvement bonds, Series B, under the company's refunding and improvement mortgage dated October 1, 1913, of the New York Central and Hudson River Railroad Company and the supplement thereto, dated June 15, 1915, executed by the applicant. It is proposed to date the bonds as of April 1, 1920, and to make them mature October 1, 2013, bearing 6 per cent interest. The applicant proposes to pledge the bonds with the Director-General of Railroads as security for a promissory note of $7,000,000, to be given to the Director-General in payment of applicant's indebtedness to him for additions and betterments costing $7,000,000 and made by the government during the period of federal control.

### RATES BETWEEN MISSISSIPPI RIVER POINTS

In answer to the application of the carriers involved in No. 9702, "Rates between Mississippi River Points," in which the Commission has issued fourth section order No. 7542 and four supplements, the last paragraph of the order has been amended so as to allow the class rates to be made effective on December 15 on fifteen days' notice and the commodity rates on January 15, on statutory notice.

### PERMISSION TO ABANDON

The Northern Pacific, in Finance Docket No. 1072, has asked permission to abandon 1.872 miles of main track and spurs enough to bring the total mileage up to 2.047 of a branch line between Wendt and Bayne, N. D., because, in the last four years, only five carloads of freight have been sent out and not one has been sent in over that track. It was built in 1890 to reach grain that was being grown on a big farm that has since been cut into small parcels, and from which grain is now shipped over another road. The elevator at Bayne has been wrecked and taken away because there was no business for it.

**The abstracts of tariff filings, rejections, suspensions, etc., as printed in each issue of THE DAILY TRAFFIC WORLD enable subscribers always to be sure their tariff files are up-to-date.**

# Docket of the Commission

**Note. Items in the Docket marked with an asterisk (*) are new, having been added since the last issue of The Traffic World. Cancellations and postponements announced too late to show the change in this Docket will be noted elsewhere.**

November 15—Columbus, O.—Examiner Disque:
* 11830—In the matter of passenger and Pullman fares, charges for excess baggage and rates on milk and cream applicable between points in the state of Ohio.

November 15—New Orleans, La.—Examiner Hartman:
8845—Natches Chamber of Commerce vs. La. & Ark. et al.
8920—Same vs. Arkansas, Louisiana & Gulf et al.
9036—Same vs. Arkansas & Louisiana Midland et al.

November 15—Helena, Mont.—Examiner Mattingly:
11860—In the matter of intrastate rates and fares of the Chicago, Burlington & Quincy R. R. Co. and other carriers in the state of Montana.

November 15—Washington, D. C.—Commissioner Woolley:
4844—In the matter of bills of lading (export bill of lading.)

November 15—Argument at Washington, D. C.:
9236—Oriental Textile Mills vs. Ala. & Vicks. et al.
Fourth Section Applications 60, 117, 221, 458, 484, 488, 540, 542, 601, 628, 703, 782, 792, 793, 794, 796, 789, 798, 799, 972, 1021, 1024, 1074, 1478, 1479, 1530, 1537, 1546, 1548, 1555, 1561, 1573, 1951, 1952, 2029, 2043, 2045, 2138, 2222, 3659, 3918, 3931, 4048, 4218, 4219, 4220, 4297, 4944, 4948 and 4964.
11052—Steel and Tube Co. of America et al. vs. Mich. Cent. et al.
10083—Whitewater Lumber Co. vs. Ala. Cent. Ry. et al.
10970—Interstate Cottonseed Crushers' Assn. vs. Ala. & Vicksburg et al.

November 15—San Francisco, Calif.—Examiner Eddy:
11669—Stewart-Warner Speedometer Corporation et al. vs. C. & N. W. et al.
11768—Albers Bros. Milling Co. vs. Director General.
11807—Frank P. Doe Lumber Co. vs. Sou. Pac. and Director General.

November 15—Denver, Colo.—Examiner Satterfield:
11786—The Midwest Refining Co. vs. Director General.

November 16—Boise, Idaho—Examiner Brown:
11406—State of Idaho ex rel. Public Utilities Commission of the State of Idaho vs. Nor. Pac. Ry. et al.

November 16—Argument at Washington, D. C.:
10422—Lehigh Portland Cement Co. vs. Midland Continental et al.
10815—Spring Valley Coal Co. et al. vs. A. T. & S. F. et al.
I. and S. 1201—Petroleum oil and petroleum oil products from points in Kansas, Oklahoma and Missouri to Chicago, Ill., Milwaukee, Wis., and related points.

November 16—San Francisco, Cal.—Examiner Eddy:
11845—Growers' Rice Milling Co. vs. Director General.
11853—C. S. Maltby vs. Director General and Sumpter Valley.
11858—Crown Willamette Paper Co. vs. Willamette Navigation Co. et al.
11858 (Sub. No. 1)—Same vs. Same.

November 17—Washington, D. C.—Examiner Wagner:
* I. and S. 1217—Class arbitraries to Sewall's Point, Va. (Time fixed for filing of briefs has been set aside.)

November 17—Argument at Washington, D. C.:
10892—Railroad Commissioners, State of Florida, vs. Aberdeen & Rockfish et al.
11130—Indian Packing Corporation vs. Ann Arbor et al.
10996—H. F. Watson Co. et al. vs. Alton & Southern et al.

November 17—Washington, D. C.—Examiner Money:
I. and S. 1223—Class arbitraries to Sewall's Point, Va. (2).

November 18—Argument at Washington, D. C.:
11076—J. R. Wheeler Co. vs. Virginian et al.
11264—National Fireproofing Co. vs. Pa. et al.
11484—Dickinson Fuel Co. et al. vs. C. & O. et al.

November 19—Washington, D. C.—Examiner Money.
I. and S. 1230—Wharfage handling and storage charges at municipal terminals, Norfolk, Va.

November 19—Raleigh, N. C.—Examiner Healy:
11828—In the matter of intrastate fares and charges of the A. C. L. R. R. Co. and other carriers in the State of North Carolina.

November 19—Argument at Washington, D. C.:
10903—Oklahoma State Shippers' Assn. et al. vs. A. T. & S. F. et al.
11245—New Mexico Commission et al. vs. C. R. I. & P. et al. Portion of Fourth Sect. App. 1046.

November 20—Argument at Washington, D. C.:
11233—Cincinnati Abattoir Co. vs. P. C. C. & St. L. et al.
10971—Little Fork Coal Co. vs. Eastern Kentucky et al.
11446—The Northern West Virginia Coal Operators' Assn. vs. Pa. et al.

November 22—Washington, D. C.—Director Colston:
* Finance Docket 7—In the matter of the application of the Gulf, Mobile & Northern R. R. Co. for a certificate that the present and future public convenience and necessity permit the abandonment of its Ellisville banch in Mississippi.
* Finance Docket 1069—In the matter of application of C. B. & Q. R. R. Co. for authority to issue $60,000,000 par value, of capital stock to execute as of Feb. 1, 1921, its first and refunding mortgage, and nominally to issue thereunder $109,000,000, principal amount, of first and refunding mortgage bonds.

November 22—Baton Rouge, La.—Examiner Brown:
11863—In the matter of intrastate rates, fares and charges of the Morgan's Louisiana & Texas R. R. & S. S. Co. and other carriers in the state of Louisiana.

November 22—Argument at Washington, D. C.:
11304—American Smelting and Refining Co. et al. vs. B. & O. et al.
11210—Chevrolet Motor Co. of California vs. C. R. I. & P. et al.
11274—Wharton Steel Co. vs. C. R. R. of N. J. and Director General.

November 23—Argument at Washington, D. C.:
11250—Briggs & Turivas vs. Pa. et al.
10831—Matthiessen & Hegeler Zinc Co. et al. vs. C. & N. W. et al.
10756—Edward Hines Lumber Co. et al. vs. B. & O. et al.

November 29—Pittsburgh, Pa.—Examiner Keene:
10197—Avella Coal Co. vs. Pittsburgh & West Virginia and Director General.
10197, Sub. Nos. 1 to 6—Same vs. Same.

November 29—Washington, D. C.—Examiner Barclay:
* 11567—The Order of United Commercial Travelers of America vs. the Pullman Co.

November 30—Indianapolis, Ind.—Examiner Jewell:
* I. and S. 1233—Grain via Indianapolis from T. St. L. & W. R. R.

December 1—Argument at Washington, D. C.:
* 10745—National Wholesale Grocers Assn. of the U. S. vs. Alabama & Vicksburg et al.
* 10745 (Sub. No. 1)—Southern Wholesale Grocers Assn. et al. vs. Sou. et al.

December 2—Argument at Washington, D. C.:
* 10826—Intermediate Rate Assn. vs. Aberdeen & Rockfish et al.
December 3—Argument at Washington, D. C.:
* 10826—Intermediate Rate Assn. vs. Aberdeen & Rockfish et al.

December 6—Atlanta, Ga.—Examiner Gerry:
* 11915—In the matter of intrastate rates, fares and charges of the Atlanta & West Point R. R. Co. and other carriers in the state of Georgia.

December 8—Argument at Washington, D. C.:
* 9506—Terrell Commercial Club vs. Texas & Pacific et al.
* I. and S. 1210—Grain and hay between Oklahoma and Texas.
* 9723—Natchez Chamber of Commerce et al. vs. St. Louis, Iron Mountain & Southern et al.
* 9723 (Sub. No. 1)—Chamber of Commerce, Monroe, La., vs. Mo. Pac.
* 10040—U. M. Slater, Inc., et al. vs. Sou. Pac. et al.

December 9—Argument at Washington, D. C.:
* 11009—Southern Hardwood Traffic Assn. et al. vs. Abilene & Sou. et al.
* 9332—Memphis Freight Bureau et al. vs. Illinois Central et al. Portions of fourth section applications 2045, 2043, 799, 1548, 2222 and 2138.
* 10595—Inland Steel Co. et al. vs. Director General.
* 10413—The Virginia-Carolina Chemical Co. vs. Director General.

December 10—Argument at Washington, D. C.:
* 11524—Limitations of liability in connection with the transmission of telegraph messages.
* 8917—J. L. Cultra and Myrtle Cultra, partners, trading as the Clay County Produce Co. vs. Western Union Telegraph Co. (unrepeated message case).
* 11024—Gunnison Valley Sugar Co. vs. D. & R. G. et al.
* 9758—South St. Joseph Live Stock Exchange vs. C. B. & Q. and Director General.
* 9928—Kansas City Live Stock Exchange vs. Same.

December 15—Argument at Washington, D. C.:
* 11338—Great Falls Brick and Tile Co. vs. C. B. & Q. et al.
* 10717—Portland Traffic and Transportation Assn. and Oregon Portland Cement Co. vs. Sou. Pac. et al.

December 16—Argument at Washington, D. C.:
* 11163—Northern Potato Traffic Assn. vs. B. & O. et al.
* 11164—Northern Potato Traffic Assn. vs. A. T. & S. F. et al.
* 11091—Central Ill. Coal Traffic Bureau vs. A. T. & S. F. et al.
* 11149—Fifth and Ninth Districts Coal Bureau vs. A. T. & S. F. et al.

December 17—Argument at Washington, D. C.:
* 11193—Bell Lumber Co. et al. vs. Ahnapee & Western et al.
* 11386—State of Idaho ex rel. Public Utilities Commission of the state of Idaho vs. Oregon Short Line et al.
* 11140—Board of Railroad Commissioners of the state of South Dakota vs. A. T. & S. F. et al.

December 18—Argument at Washington, D. C.:
* 11334—Traver, Steele & Co. vs. St. Louis S. W. et al.
* 11291—J. B. Taylor vs. Great Northern et al.
* 11394—A. B. Alpirn vs. C. B. & Q. and Director General.

December 20—Argument at Washington, D. C.:
* 11415—St. Louis & O'Fallon Ry. Co. vs. East St. Louis & Suburban et al.
* 11275—Carnegie Steel Co. vs. Pittsburgh & Ohio Valley et al.
* 11253—Pittsburgh Terminal R. R. & Coal Co. vs. Pa. et al.

December 21—Argument at Washington, D. C.:
* 11265—Sun Company vs. Delaware River & Union et al.
* 11146—Automatic Sprinkler Co. of America et al. vs. Alabama & Vicksburg et al.
* 11229—Louis Werner Stave Co. vs. Director General and Louisiana Ry. and Nav. Co.
* 11159—Choate Oil Corporation vs. C. R. I. & P. et al.
* 11159 (Sub. No. 1)—Home Petroleum Co. vs. A. T. & S. F. et al.

December 22—Argument at Washington, D. C.:
* 11389—Kelsey Wheel Co., Inc. (Memphis, Tenn.) vs. Yazoo & Mississippi Valley et al.
* 11514—Davis Mfg. Co., Inc., vs. L. & N. et al. Portions of fourth section applications 1548 and 1952.
* 11358—Louisville Cement Co. vs. Director General.
* 11252—Virginia-Carolina Chemical Co. vs. Director General.

December 23—Argument at Washington, D. C.:
* 11487—Buckeye Veneer Co. vs. Director General.
* 11355—Central Pennsylvania Lumber Co. vs. Director General and Pennsylvania.
* 11302—Stone Products Co. vs. A. T. & S. F. et al.
* 11432—George A. Fuller Co. et al. vs. A. C. L. et al.

December 27—Argument at Washington, D. C.:
* 11283—Miami Copper Co. vs. Arizona Eastern et al.
* 11479—Consolidated Gas, Electric Light and Power Co. of Baltimore vs. Canadian Pacific et al.
* 11403—Nestle's Food Co., Inc., vs. Mobile & Ohio et al.

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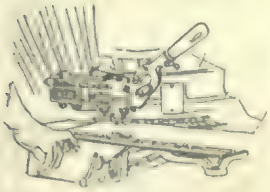
# Why the Ideal Stencil Machine is the Easiest and Speediest in Operation



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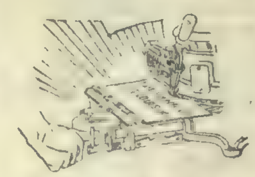

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# The Kansas City Southern Railway Company

## *The Shortest Line to the Gulf*

### Publicity Bulletin No. 18

A Railroad measures its business by the number of ton miles and passenger miles it produces each year. In other words, it is like a manufacturing institution, which measures its business by its output.

The growth of business on the Kansas City Southern is indicated by the following figures:

| Year | Net Ton Miles | Passengers Carried One Mile |
|---|---|---|
| 1911 | 925,279,313 | 66,510,967 |
| 1912 | 840,995,242 | 63,662,816 |
| 1913 | 1,017,522,676 | 67,533,444 |
| 1914 | 1,062,756,263 | 73,356,612 |
| 1915 | 1,128,730,654 | 64,546,023 |
| 1916 | 1,172,356,158 | 69,262,538 |
| 1917 | 1,432,558,736 | 83,033,166 |
| 1918 | 1,680,903,761 | 90,557,212 |
| 1919 | 1,270,503,416 | 95,879,619 |
| First Half 1920 | 739,558,468 | 52,112,925 |

This indicates a considerable growth of business during the period mentioned.

To take care of the growth of this business, our Company has expended in Additions and Betterments during this period to December 31st, 1919, approximately $16,000,000.00.

The following table shows the growth in average loads in tons per loaded car:

| | | | |
|---|---|---|---|
| 1911 | 21.92 | 1916 | 22.87 |
| 1912 | 21.09 | 1917 | 24.59 |
| 1913 | 22.22 | 1918 | 27.82 |
| 1914 | 22.14 | 1919 | 25.24 |
| 1915 | 23.30 | (Sept.) 1920 | 29.20 |

In 1911 the average car capacity of all cars in the United States was 37 tons, and the average loading on the Kansas City Southern was 21.92 tons, indicating that the cars furnished were used up to 60% of their capacity. In 1918 the capacity tonnage of cars was 41 tons, and the Kansas City Southern loading was 27.82 tons, which indicates a loading of 68% of the capacity of the car—showing that shippers are responding to the requests of the Railroads for heavier loading.

Heavier loading is a wonderful help, because so many cars go empty one way on our line, and the greater number of tons loaded in a car means less movement of empty cars. Our Company appreciates greatly the co-operation of all its patrons, which has enabled it to show this gradual increase in business and gradual increase in car loading. The movement of freight cars on our rails is now exceeding 40 miles per day, which indicates an effort on the part of our organized forces to express appreciation towards our patrons for the large volume of business which is now moving over our rails, which for the past few months has been the largest in our history.

J. F. HOLDEN, Vice-President
H. A. WEAVER, G. F. A.
Kansas City, Mo.

# The Traffic World

ISSUED EVERY SATURDAY BY

THE TRAFFIC SERVICE CORPORATION, CHICAGO, ILL.

(Copyright, 1920. Fourteenth Year)

A working tool for traffic men, both industrial and railroad; a national journal of transportation news; independent as between carrier and shipper

Vol. XXVI | SATURDAY, NOVEMBER 20, 1920 | No. 21

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## A SCHOOL OF TRANSPORTATION

Stanton Ennes, general manager of the Baltimore and Ohio eastern lines, in an article in the magazine published under the auspices of his road, contributes a suggestion for a school of transportation. "We have no great school or college of transportation, except that of practical experience," says he. "Hence, for many years, I have always hoped that we might develop some systematic method of training our young men. I have thought of the correspondence schools and the large uses to which they have been put, or of any other large organization which could train young men against the many mistakes they make when they are thrown into active railroad life without training.

"In many respects railroading is an exact science. There are certain fundamental principles of operation which have been learned by years of experience and which could be taught as easily and as thoroughly as the tables of multiplication. It seems unfortunate that the young man who feels the thrill and the lure of the railroad business cannot go to a school which will teach him the fundamental principles of his business, will prepare him against the mistakes that have been made and repented of by others, and generally fit him to become a trained railroad man. What a boon to transportation, to the young man himself, to the railroad for which he works, and to the service of the country!"

It is indeed strange, as well as deplorable, that there is no transportation school like that Mr. Ennes suggests. There are, to be sure, transportation courses in some of our colleges and universities, and some of them are excellent. But they are incidental to the college course and beyond the reach of the young man who merely wishes to study the fundamentals of his chosen business. Besides, they are theoretical and not practical. One completing such a course knows a lot about transportation but he is certainly not a practical railroad man or even able to fill a position where practical knowledge is necessary. We have correspondence schools that teach traffic and some of them are extremely practical. But their specialty is traffic—industrial as well as railroad—and that is not what Mr. Ennes has in mind. He is thinking of "railroading" in the sense in which it is understood by railroad men. So far as we know, there is no school, correspondence or otherwise, that attempts to teach this subject. It seems to us that in these days of successful and excellent correspondence schools here is a chance for someone, not only to make some money for himself, but to do a service in the business of transportation.

## THE LAW AS TO RAILROAD REVENUE

It ought not to be necessary to repeat so many times the provisions of the new transportation act with respect to the revenue of the railroads, but, in view of what one hears from time to time about this matter from persons who ought to be better informed, it seems to be necessary. It is not to be wondered at that the public is confused when persons who write or speak through financial publications with supposed authority and even accredited representatives of the carriers themselves use such inaccurate and misleading language.

One hears, for instance, on the one hand that the new law and the decision of the Commission under that law guarantee to each carrier six per cent on its valuation; some even make the error of saying that the guaranty is six per cent on the stock outstanding. On the other hand, one frequently hears a railroad man in a public address or otherwise say that the new law guarantees the carriers nothing, leaving the impression that the new status of the carriers is not much better than the old. Neither the one nor the other is correct.

The new law instructed the Interstate Commerce Commission to fix rates so that the carriers as a whole or by territorial groups (in the discretion of the Commission) should earn five and a half per cent on their valuation (as fixed by the Commission) as a whole or by such groups. The law allowed the Commission to add to this, one-half of one per cent for so-called unproductive improvements. The Commission chose to consider the carriers by territorial groups. It also chose to add the one-half of one per cent, thus making the revenue to be earned on the valuation, six per cent. It then proceeded to fix the valuation and to advance rates so that six per cent would be earned by the carriers as a whole on the valuation as a whole in each group. A

carrier earning just this six per cent or less than six per cent on its valuation gets what it earns. A carrier earning more than six per cent must divide the excess with the government, the government's half being kept in a fund for lending to railroads that need it.

It will thus be seen that to no individual carrier is guaranteed anything except a chance to participate in larger earnings than had been provided before or than probably would have been provided if this law had not been enacted. No one has any idea that the Commission would have granted such a huge increase in rates as was provided in its decision in the 1920 advanced rate case if the law had not instructed it to do so.

It cannot be denied that, for the stronger roads—those that would earn, under any scale of rates conceivable as being provided, earn more than six per cent, net—the new law operates to cut down their revenue. On the other hand, for the poorer roads—those that would, under the same conceivable scale of rates, earn less than six per cent—the law is a benefit. They may not, under it, earn six per cent, but they will come nearer it than otherwise. Neither can it be denied that the new law means more revenue for the roads as a whole. For it to operate otherwise it would be necessary for the sum paid to the government in splitting the excess over the six per cent earned by the more prosperous roads, to be larger than the additional revenue produced by the increase in rates made under the law. We think nobody will argue that this will prove true, though, of course, it is a possibility.

One may think the law good or think it bad, but he ought not to misrepresent its meaning, either intentionally or through ignorance. It may be worse than is believed or it may be better. We shall have to wait until it has had a fair trial before drawing any conclusions. Meanwhile, the poorer roads will be better off than they ever were and so will the roads as a whole. It remains to be seen how much the richer roads will suffer and whether that suffering is of such importance as to warrant changing the law. It certainly is true that, if any have to suffer, the ones that will suffer are the ones best able to stand the hardship and, in the main, that those that will profit are the ones most in need and deserving of help. This, of course, from the wider point of view of the transportation necessities of the country rather than from the point of view of those who may have money invested in the railroad properties themselves.

## COAL EXPORT POLICY

We have made some more or less tentative suggestions in this column that one way to increase the supply of coal for domestic consumption and to keep the price from soaring out of all apparent reason would be to embargo the export of this commodity. In support of those suggestions we call attention to the article by Secretary Alexander, of the Department of Commerce, published in this magazine November 13, on the subject of export trade in coal.

He does not attack the problem from the point of view of one who is desirous primarily of keeping down the domestic price, but rather of one who would have a reasonable national policy of foreign trade in this commodity. But, in arguing his policy, he clearly shows the effect any export trade in coal—even under his own policy—would have on domestic price. "It should be borne in mind," says he, "that the export of coal on a large scale means the depletion of our reserves and the mining of coal at an increasing cost of production. . . . . The export of coal takes away just so much of the product as is nearest the surface. The cost of production increases, and there is a tendency to bring lower grade coal into the market. . . . . The too extensive development of the export trade from this field (the Appalachian field) is likely to result in an increased price to domestic consumers who are manufacturing for home consumption and foreign trade."

We should say that the facts show not only that export of coal may result in a higher domestic price but that it does actually so result. Perhaps that higher domestic price would be a proper charge against the domestic consumer in the interest of the coal export policy which Mr. Alexander thinks wise, but certainly the domestic consumer ought not to have to pay a premium in order that the coal producer may make an inordinate, or even a reasonable, profit on an indiscriminate and unwise export trade; and, whether the export policy be wise or unwise, is there any reason—except the desire and the opportunity for profiteering—why the domestic consumer should pay more than a proper price for his coal on account of it? We know all about the law of supply and demand, but the point, if the government is going to get into this matter at all, is whether it is going to permit the fact that foreign trade offers a more profitable field, at times, for the man who has coal to sell, to set the standard for domestic price at far beyond a reasonable profit? By all means, let us have a wise policy for the export of coal—Mr. Alexander's or some other—but let us not have the coal dealers themselves deciding what that policy shall be and then making the domestic public pay the price.

The coal in the ground in this country belongs to its citizens first. It may be charitable, or good business, or wise statesmanship—especially just at this time—to let some of our neighbors share with us the resources of our land. It may also be necessary or wise that our citizens should pay some penalty as a result of this generosity. But if it is proper for the government to take any part, the size of the penalty or the question as to whether there should be one at all or not, should be settled by the people themselves through their public servants in Washington and not by the dealers in coal who seek only a profit.

## OPERATING STATISTICS

*The Traffic World Washington Bureau*

**In a final summary of operating statistics for August and the eight months ended with August, issued November 11, the Commission said that the net ton-miles of revenue and non-revenue freight showed an increase, August 1920 over August, 1919, from 36,416,000 to 42,656,000, an increase of 17.1 per cent.**

**In that same month the net ton-miles per freight-train mile increased from 777 to 788; the car-miles per day increased from 24.6 to 27.5; net ton-miles per car-day, from 479 to 561; and the net ton-miles per loaded car-mile increased from 28.2 to 30.1.**

**In the eight-month period the net ton-miles including non-revenue freight, increased from 248,819,000,000 to 291,053,000,000, an increase of 17 per cent. The net ton-miles per train-mile increased from 719 to 729; the car-miles increased from 21.9 to 23.8; the net ton-miles per car-day from 419 to 489; and the net ton-miles per loaded car-mile increased from 28.3 to 28.8.**

# Current Topics in Washington

**Regulation of Ocean Transportation.**—The hearing held this week on the proposed through export bill of lading suggested a number of thoughts to those inclined to think on the philosophy of things pertaining to transportation. None of the thoughts is more distinct than that, whether the policy be wise or the reverse, regulation of common carriers is creeping out over the ocean. Every now and then the carriers by water are compelled to give up something of their freedom, at the insistant demand of their customers. About nine months ago, C. E. Spens, using the club put into his hands by the fact that the Shipping Board is a governmental institution, forced the ship lines to agree to an arrangement which relieves the shipper from an interior point from the payment of demurrage on stuff moving on the bills that were called through bills, but as a matter of fact were not, unless the delay was caused by the shipper. The proposed through bill cuts down the freedom of the ship lines in several directions. Some of them may announce that they will not accept freight when tendered on such a bill as the Commission is expected to prescribe. But when they so declare, there will stand the Shipping Board, a governmental institution, subject to the pressure of public sentiment, which, in this instance, means the views of the shippers in the interior. In the last analysis, it is suggested, the shipping lines will do exactly what the competition of the government vessels will force them to do. They assented to the Spens plan of avoiding demurrage as soon as the Shipping Board, acting through the Emergency Fleet Corporation, accepted that plan for facilitating the movement of goods from the interior, through the ports, not because they liked the plan, but because the competition would tend to send tonnage to the Shipping Board lines. An interior shipper, if offered a bill of lading that would avoid the payment of demurrage at the port, unless the delay was caused by him, or one on which he might be called to pay an unknowable amount of demurrage, it was figured, would take the first mentioned, or Spens bill. Acceptance of that plan, by lines controlled by the Shipping Board, broke down a wall the shipping lines had built for what they considered their own defense. They have resisted the encroachments contained in the proposed bill of lading to their utmost. The query is as to what the Shipping Board will do, when the time comes for accepting or rejecting freight offered on bills that are supposed to ignore many of the most highly cherished shields of protection for the carrier by water.

**Through Rail and Ocean Rates.**—Another almost equally interesting thought in connection with the subject is the suspicion that, as the barriers between the two kinds of carriers are removed, the importance of the ports will diminish. They are now rate-breaking points, so to speak. Removal of barriers, it is suggested, will tend to make the man at the port a smaller factor in facilitating transportation through the ports than he is now. The idea of joint rates between carriers to and from the Mississippi and Ohio rivers, in the memory of men still living, were considered fanciful dreams. Such rates between ocean carriers and railroads may also be dreams. As a matter of fact, there are thousands of men still alive who, if they were in any way connected with transportation, could recall when freight was physically transferred at junctions. At Mansfield, O., for instance, the physical transfer of grain took place, not through elevators, but by placing the loaded cars on a track higher than the one on which stood the empties to be loaded. As much grain as would do so was allowed to run through chutes from the full to the empty cars. The rest was shoveled. That was probably done on account of the fact that the Erie, then the Atlantic & Great Western, known by the irreverent as the Almighty & Great Windy, was a broad-gauge road, having been built by Englishmen, while the Pennsylvania and Baltimore & Ohio were then, as now, standard gauge. The idea of a Pennsylvania piece of equipment being hauled by one of the red-wheeled B. & O. camel-backed engines, at that time was considered the dream of visionaries. In those days, too, the Baltimore & Ohio rather looked down on the Pennsylvania as a parvenu who might or might not long continue. But the hand transfer of freight is gone, and except in the busy season grain is allowed to come through, at least to Chicago, without transfer. Such integration of facilities of the land and water carriers that the shipper will know very little about the actual physical handling of his goods seems far away, but so did the things that were common when it was the duty of every middle-aged man to proclaim the fact by wearing a broom-like throat protector, furnished by nature, on the lower half of his face.

**The Harper Act.**—Mention of through export bills and Mansfield, O., brings to mind the fact that that city was the home of Michael D. Harter, the author of the law on which the shipping lines base much of their defensive work. He was a builder of threshing machines and engines. His knowledge of the sea was about as limited as that of most of the men who have taken part in the framing of the export bill; that is to say he knew that the sea was a thing that was much talked about by the elders who crossed it to get rid of the entangling alliances in Europe which sent the armies across their fields every few years because some Wettin fell out with some Wittelsbach, or some Hapsburg, or some Saxe-Coburg-Gotha, or some Mecklenburg-Holstein-Gottdorp. But he was a big shipper by rail and he knew there should be some statute on the subject of the relations between shipper and ocean carrier. He got his bill passed and signed in 1893, six years after the first act to regulate commerce was passed. Harter's name is being mentioned more often now, it is believed, than while he was alive, simply because the statute that bears his name, by the lapse of time, has been made more important than it was thought to be when it was passed.

**Pig-tails and Carload Rates.**—That revolution in China which persuaded the Chinese to deprive themselves of pig-tails has had a reflex in this country in the form of a demand for a carload rating on press cloth manufactured out of human hair accumulated by reason of the fact that every forward-looking Chinese became his own Delilah when the revolution upset the Manchu power and made it safe for the Chinaman to cut off the symbol of his subjection to the fiercer northern race. The necessity for a carload rating was brought out during arguments on the complaints of the Interstate Cottonseed Crushers' Association and the Oriental Textile Works, dockets Nos. 9236 and 10970. One of Clifford Thorne's clients has 800,000 pounds of former pig-tails for manufacture into press cloth, which heretofore has been made largely with the hair of the goat and the camel. Thorne estimated that the 800,000 pounds represents the queues that once dangled from the heads of 2,400,000 Chinese whom the Manchu had condemned to be goats. Nearly every revolution in the world produces some kind of an effect on American railroads or their rates. A natural query, it is believed, would be one designed to bring out suggestions as to what the Russian soviet revolution will produce along that line. Suggestions as to carload rates on Russian caviar from Sandusky, O., it is fancied, would not be admitted to the competition by the committee that might be appointed to consider the answers.

**Set-back for Carrier Earning Power Optimism.**—The report of the board of compensation referees, recommending to President Wilson that he offer the Chicago & Alton, as compensation for the use of its property during the period of federal control, the average of net railway operating income for the test period of three years ending with June 30, 1917, it is suggested, will dampen the enthusiasm and optimism of some of the carriers who have suggested that their earning in 1917 would probably have continued throughout 1918 and perhaps throughout the following year. There will always be a question, it is suspected, as to whether the owners of the railroads, during the war, could have made any more than they earned for the government under the guiding hands of William Gibbs McAdoo and Walker Downer Hines. The Alton report will be cited to show that at least one body of men, each member of which acted under oath, has expressed the belief that the Alton could not have done as well in 1918 as it did in 1917, the latter being the last year of private control and the former the first of federal. Several carriers have insisted that the average for the three years is not high enough to measure what they would have accomplished had the government not taken their property from them. On the other hand, the fact that the Southern did better in the six months guaranty period than if it had accepted the guaranty, tends to raise a question as to whether the conclusion of the referees in the Alton case is so overwhelmingly in line with what might have been accomplished had President Wilson not seized the property of the carriers, as the best method for getting them out of the mess created very largely, many well informed men believe, by the shortcomings of government officials and Congress. The former blocked the railroads by the profuse distribution of priority orders in the summer and fall of 1917. Congress fell down in not having the foresight to repeal the restrictive anti-trust laws and depend upon the regulative laws to see to it that the railroads did not gouge the public.

**More Election-Day Thoughts.**—Iowa has finished counting the ballots and Senator Cummins, chairman of the Senate interstate commerce committee, appears to have a plurality of about 200,000, notwithstanding the efforts of leaders of organized labor to keep him at home on account of his work on the transportation law and especially his anti-strike proposals, which did not get into the statute but which did pass the senate. The veteran Iowan is gratified that his constituents gave him an endorsement, notwithstanding the efforts of the labor leaders to represent him as a horned individual fit only to be thrown into outer

darkness. He has returned to Washington for the winter. His idea is there will be no serious attempt to change the transportation law, except in that part of it relating to valuation. It is his intention to press the bill introduced by him when the Supreme Court decided the Kansas City Southern case in such a way as to require the Commission to do what it considers a vain thing—take testimony on a phase of the subject which, when taken, according to the Commission, could be used for no rational thing. Another look over the election returns shows that Frank H. Funk, of the Illinois commission has been elected to sit alongside of R. Walton Moore, the commerce attorney who, for many years, represented the carriers of the southeastern territory in cases before the Commission. Moore and Funk can foregather in the House and nudge each other in the ribs when some of their colleagues begin talking on a phase of the transportation question requiring a bit of expert knowledge on the subject. Nearly every debate on the subject brings out some orator who brings tears to the eyes of informed auditors who may be sitting in the galleries, hoping to hear something illuminating. Funk and Moore know the subject with the knowledge that must stand the scrutiny of experts all over the country.

**Making the Government Pay.**—Every man who has ever sold anything to the government knows, that some time or other, in the vernacular, he will get "stung" by having an inspector hold up something that is commercially all right, but from the hyper-crtical point of view of the government inspector, is all wrong. Few of those who have been compelled to wait for their money have the opportunity to even attempt to tell the bumptious government officials to head in. These ideas are brought out by the fact that since November 10 the Western Union has had the government on the prepay list, so far as cable messages are concerned. In theory, when the government, especially the state department tenders a message, it must produce the coin, just as if it were a ragged newsboy tendering the Western Union a telegraph message. According to the company the removal of the government from the credit list is due to the fact that cable bills incurred since August, 1919, have not been paid. The government officials are inclined to hold that the refusal to extend further credit is due to anger over the refusal of the state department to permit it to land a cable on the coast of Florida, which would connect with a British cable at Barbados and thereby continue what the government officials talk of as the Western Union monopoly in South America. The rights and wrongs of the situation, from the point of view of the man interested in transportation law are insignificant in comparison with the query as to whether a common carrier's right to exact prepayment of its charges can be asserted against government officials in the transaction of official business. If it cannot, it is suggested, the government officials can seriously impair the capital of the Western Union by requiring it to continue performing service without even payments on account. The right to exact prepayment of freight rates and tolls is unquestioned, except where a carrier has unwisely embodied provisions about exaction of prepayment in tariffs that are subject to suspension. A. E. H.

# PROTEST FURTHER RATE INCREASES

The Jacksonville (Fla.) Wholesale Grocers' Association has adopted the following resolutions:

Whereas, Pursuant to the provisions of the Transportation Act, 1920, the Interstate Commerce Commission has named all the increases in rates, fares and charges which are necessary to enable the carriers by railroad subject to its jurisdiction—"under honest, efficient and economical management and reasonable expenditure for maintenance of way, structure and equipment" to earn the income allowed by law, and

Whereas, Regardless of the large increases allowed by the Commission, the carriers individually and through their Rate Committees and Tariff and Classification Agencies, have continued their activties to bring about further increases in revenue by the concellation of long established commodity rates, reclassification of articles shown in the freight classifications, increasing carload minimum weights on many commodities and by other means, and

Whereas, many of these unauthorized increases have been put in effect by the carriers over the objections of and to the injury of shippers and the public, and

Whereas, With the many changes that have been proposed or that might be proposed by the carriers it becomes a practical impossibility for the public to check every tariff issued to keep track of the changes and to make itself effectively heard against the upward revision of rates, fares and charges, and

Whereas, the burden of showing the justice of any increase of rate, fare or charge should in all good sense and good government be placed upon the carriers rather than upon the general public, and

Whereas, The Transportation Act, 1920, is defective in that it does not provide that increased rates, fares and charges for interstate application shall first be submitted to and approved by the Interstate Commerce Commission before being put in effect, thereby requiring common carriers subject to the Act to justify all increases before making them operative.

Therefore, be it resolved, that the members of the Jacksonville Wholesale Grocers' Association in meeting assembled, do hereby request our Congressmen and Senators to enact legislation at the next session of Congress to prohibit common carriers from increasing Interstate rates, fares and charges without the permission of the Interstate Commerce Commission.

Be it Further Resolbed, That the Secretary of this Association be and is hereby authorized and instructed to furnish copies of this resolution to our Congressmen and Senators.

# REVENUE FREIGHT LOADING

*The Traffic World Washington Bureau*

Revenue freight loaded by districts for the week ending October 30 and the corresponding week of 1919, according to the weekly report of the car service division of the American Railway Association, was as follows:

Eastern District: Grain and grain products, 5,830 and 6,641; live stock, 2,803 and 3,787; coal, 57,407 and 51,137; coke, 3,504 and 3,324; forest products, 8,052 and 7,257; ore, 10,631 and 5,991; merchandise, L. C. L., 50,661 and 27,552; miscellaneous, 94,660 and 117,151; total 1920, 233,548; 1919, 22,840; 1918, 218,917.

Allegheny District: Grain and grain products, 2,131 and 2,743; live stock, 3,536 and 3,542; coal, 69,777 and 65,179, coke, 7,203 and 4,024; forest products, 4,074 and 4,220; ore, 12,191 and 9,513; merchandise, L. C. L., 39,286 and 42,476; miscellaneous, 73,328 and 69,891; total, 1920, 211,526; 1919, 201,498; 1918, 198,653.

Pocahontas District: Grain and grain products, 96 and 221; liv estock, 275 and 326; coal, 24,468 and 27,014; coke, 733 and 646; forest products, 2,036 and 2,002; ore, 257 and 330; merchandise, L. C. L., 2,689 and 156; miscellaneous, 7,192 and 9,742; total, 1920, 37,746; 1919; 40,437; 1918, 35,059.

Southern District: Grain and grain products, 2,606 and 3,036; live stock, 2,213 and 2,854; coal, 28,537 and 26,976; coke, 1,600 and 318; forest products, 18,796 and 17,225; ore, 2,963 and 2,563; merchandise, L. C. L., 38,026 and 19,761; miscellaneous, 36,990 and 58,793; total, 1920, 131,731; 1919, 131,526; 1918, 113,728.

Northwestern District: Grain and grain products, 13,102 and 12,691; live stock, 9,359 and 10,819; coal, 11,014 and 15,638; coke, 1,802 and 702; forest products, 15,799 and 14,785; ore, 39,280 and 20,415; merchandise, L. C. L., 30,867 and 21,783; miscellaneous, 35,640 and 43,682; total, 1920, 156,863; 1919, 140,515; 1918, 147,970.

Central Western District: Grain and grain products, 9,464 and 10,646; live stock, 11,564 and 16,562; coal, 25,555 and 23,715; coke, 472 and 424; forest products, 5,565 and 5,971; ore, 2,718 and 2,477; merchandise, L. C. L., 31,138 and 25,274; miscellaneous, 49,869 and 54,131; total, 1920, 136,345; 1919, 139,200; 1918, 122,578.

Southwestern District: Grain and grain products, 3,438 and 3,806; live stock, 2,347 and 3,396; coal, 7,945 and 7,366; coke, 137 and 118; forest products, 6,815 and 5,512; ore, 176 and 353; merchandise, L. C. L., 16,663 and 12,709; miscellaneous, 27,840 and 26,203; total, 1920, 65,361; 1919, 59,463; 1918, 55,487.

Total, all roads, grain and grain products, 36,667 and 39,784; live stock, 32,097 and 41,196; coal, 2224,703 and 217,025; coke, 15,451 and 9,556; forest products, 61,137 and 56,972; ore, 68,216 and 41,642; merchandise, L. C. L., 209,330 and 149,711; miscellaneous, 325,519 and 379,593; total, 1920, 973,120; 1919, 935,479; 1918, 893,292.

The division states that L. C. L. merchandise loading figures for 1920 and 1919 are not comparable, as some roads are not able to separate their L. C. L., freight and miscellaneous of 1919, and that the merchandise and miscellaneous columns should be added to get a fair comparison.

# CALL FOR CARS IN NORTHWEST

*The Traffic World Washington Bureau*

A call for more grain cars and for refrigerators came from the northwest to Director Robbins, of the Commission's service bureau, November 11. A committee composed of Representatives Young of North Dakota, Newton and Anderson of Minnesota, and Commissioners Jacobson of Minnesota, and Raish, Andahl, and Milhollan of North Dakota asked him to exert himself with a view to obtaining a larger supply of box cars suitable for grain loading and cars in which the potato crop may be moved.

Railroads in the northwest, according to reports to the car service division of the American Railway Association, have a fairly large percentage of box cars on their rails, but, according to the members of the committee, the percentage of cars fit for grain loading is not more than thirty per cent on any of the lines serving the northwest, and the average is probably not more than twenty per cent.

An unusually large number of box cars suitable for potato loading was in the northwest early in the season but the coming of cold weather, said Commissioner Jacobson, renders them unfit for that use and the desire of the shippers in that part of the country is to have recalled from the Pacific coast country and the southeast the refrigerators that in other seasons have been assigned to the movement of the northwestern potato crop.

Director Robbins promised to exert himself to the limit of his authority to get cars sent to their home lines. He suggested that the committee take up the subject with M. B. Casey, the car service division agent at Chicago, who has been handling the refrigerator car situation in succession to W. L. Barnes, the executive manager of the division in Washington.

# Decisions of Interstate Commerce Commission

## ISSUES ORDER IN N. Y. RATE CASE

*The Traffic World Washington Bureau*

In an opinion by Commissioner Ford in case 11623, In the Matter of Rates, Fares and Charges of the New York Central and Other Railroad Companies in the State of New York, commonly known as the New York intrastate passenger fare case, the Commission held fares, charges and rates required by state authority to be maintained within New York, lower than corresponding interstate fares, charges and rates authorized in Ex parte 74 to be unduly prejudicial to interstate passengers and shippers, unduly preferential of intrastate passengers and shippers and unjustly discriminatory against interstate commerce. An order based on this opinion requires carriers in New York to establish, on or before December 18, upon not less than five days' notice, rates, fares and charges as high as those authorized in Ex Parte 74, for passenger fares, excess baggage charges, rates on milk and cream and surcharge for transportation in Pullman cars. This decision is a condemnation of the laws of New York and orders of its public service commission which require intrastate rates lower than those established by the Interstate Commerce Commission on interstate commerce. The decision is a clear-cut victory for the contention of the New York Central and other carriers. It is taken as meaning that the same ruling will be made in all of the pending intrastate passenger and freight rate cases as the issues in those cases, so far as fundamental principles are concerned, are identical with those in the New York case. This is the first decision in the intrastate rate cases before the Commission and under the new transportation act as applicable to such situations.

The Commission's decision reserves for further consideration local commutation fares. The order of the Commission is expected to get into the courts in several states almost immediately.

Litigation, directly involving the same question, is already under way in New York, Florida and Virginia. It is in both state and federal courts in New York, in state courts in Florida and federal court in Virginia. It will be necessary for the railroads in New York to apply to the federal courts for injunctions to prevent state authorities from acting in a spirit contrary to this decision.

The Commission's decision is not binding upon state authorities unless buttressed by a mandate from a federal court. The railroads are expected to act at once not only in New York but in every state where state laws or orders of state commissions are in conflict with the opinion rendered by the Commission in this case.

Commissioner Eastman dissented because he believes the decision goes beyond the Commission's lawful powers. It is his opinion that Congress did not authorize the Commission in this sweeping way to dispose of what it may regard as discrimination against interstate commerce. The law as construed by Commission, Eastman said, falls nothing short of an appellate power "to substitute our judgment as to the reasonableness of state rates for the judgment of the state."

## DISMISSES COPPER BULLION CASE

With Commissioner Eastman dissenting, the Commission, in a report written by Chairman Clark, has dismissed No. 10825, Tennessee Copper Co. vs. Baltimore & Ohio, director general et al., Opinion No. 6446, 59 I. C. C. 253-9, holding that the refusal of the defendants to accord refining-in-transit arrangements at Baltimore on copper bullion, in carloads, moving from Copperhill, Tenn., to destinations in Delaware, Pennsylvania, New York, Connecticut and Massachusetts had not been shown to be unreasonable, unjustly discriminatory or unduly prejudicial.

Refining-in-transit arrangements exist at Perth Amboy, Maurer and Chrome, N. J., and at Laurel Hill, N. Y., but not at Baltimore. The Baltimore complainants pay the combination to and from Baltimore while the competitors have through rates, which are about $5 per ton lower, to destinations in New England than the combinations on Baltimore.

The order of dismissal is based on the theory that if an order were made to remove undue prejudice, the carriers responsible for the rates would not have the option of either granting the transit privilege at Baltimore or withdrawing it at the other points because Baltimore is not served by the Central of New Jersey and New Haven, which give the transit arrangements.

Chairman Clark in his report said the reasonableness of the rates on which the Baltimore refiners do business was not called in question.

Commissioner Eastman in his dissent called attention to the fact that the Central of New Jersey and the New Haven pay for the service of transit out of the divisions allowed them by the carriers which serve Baltimore and for that reason he is not convinced that this is an inequitable situation with which the Commission cannot deal. He suggested that the chairman's conclusion that the reasonableness of the rates to and from Baltimore was not in issue was negatived by the chairman's declaration that the attack was upon the combination of rates to and from Baltimore and that the Commission could examine the components of the combination. He called particular attention to the fact that the aggregate for shipping copper bullion to Baltimore for refinement and then forwarding refined copper to Waterbury, Conn., is $14.20, while either the bullion or the refined product can be shipped from Copperhill to Waterbury for $9.50. For $9.90, he said the bullion could be shipped to New York, refined there and the refined product shipped on to Waterbury. The factor from Baltimore to Waterbury on the refined product via New York harbor is $6, while the factor from New York to Waterbury under the refining-in-transit arrangement in which all the carriers participate is 90 cents for a distance of 87 miles. In addition he pointed out the testimony showed that the Central of New Jersey takes care of the New Haven out of the divisions paid it by roads that do serve Baltimore.

"Under the circumstances," said Mr. Eastman, "I am of the opinion that the record affords a basis for finding that the maintenance of the refining arrangement at New York and the failure to establish a similar arrangement at Baltimore constitutes undue prejudice, which should be removed."

## EXPRESS CLASSIFICATION DECISION

*The Traffic World Washington Bureau*

In its decision in case 11416, the Express Classification, the Commission has required modifications in items pertaining to display fixtures, motor truck seat cabs, the uniform express receipt, pick-up and delivery services, refrigeration, reconsignments, marking requirements, cloth other than silk, returned empty carriers, live fish, green fruit, ice cream, laundry, lobsters, newspapers other than daily, shell fish, live poultry and pigeons, trees and shrubs, bicycles, paid C. O. D.'s and collections, and cakes. As to ratings on daily newspapers, the substitute offered at the hearing was held justified. Owing to prohibition, the cancellation of item about beer and ale was held justified, but no finding was made as to cereal beverages. The first line of the proposed receipt was held to be clearly violative of the Cummins amendment.

## CREDIT FOR FREIGHT CHARGES

*The Traffic World Washington Bureau*

The Commission has reopened Ex Parte 73, "Regulations for Payment of Rates and Charges," in which it prescribed rules governing the payment of freight charges, with a view to determining if, and to what extent, the part of the law forbidding credit in the payment of freight bills applies to transactions between carriers by rail and carriers by water. A hearing and argument on the subject will be held December 13 by Assistant Chief Examiner Butler, at Washington. Inasmuch as it is largely a question of construing the law, the hearing part of the case, it is expected, will be exceedingly brief.

In announcing the hearing and argument, the Commission said that, it appearing that, in many instances, freight is transported (A) partly by railroad and partly by water, by carriers by railroad, subject to the provisions of the interstate commerce act, which operate both by rail and by water; also (B) wholly by the water lines of such carriers by railroads; also (C) partly by railroad and partly by water under through route arrangements between such carriers by railroad and water lines operated independently of such carriers by railroad; also (D) partly by railroad and partly by water under through route arrangements between such carriers by railroad and water lines owned or controlled by carriers by railroad; and that in each of said instances delivery or relinquishment of possession at destination of the freight so transported is effected by or through the water line; and that questions having arisen as to the application to such cases of the provisions of paragraph (2) of section 3 of the interstate commerce act, and of the Commission's order of June 4, it was deemed desirable to hold a hearing and argument with the view to the issuance of further orders if such are necessary.

### CAR ACCUMULATIONS

Car accumulations for the week ended November 5 amounted to 32,665, according to reports received by the car service division of the American Railway Association. For the preceding week the accumulations totaled 40,040.

# Tentative Reports of the Commission

## RATES ON COTTONSEED

In a tentative report on No. 11348, Empire Cotton Oil Company vs. Atlantic Coast Line et al., and a portion of fourth section application No. 703, Examiner Warren H. Wagner has recommended a finding that rates on cottonseed in carloads from certain points in Florida south of Jacksonville to Cordele, Ga., were unreasonable because and to the extent that they exceeded the lowest combination over the routes of movement; that the complainant made the shipments as described and is entitled to reparation.

Wagner recommended a further finding that the rates proposed by the defendant railroads based on lowest combination would not be unreasonable for the future. However, said the examiner, as some would violate the fourth section, no order should be issued as to rates for the future, but defendants should be expected to establish within 60 days after the service of the report rates on the basis of those proposed that would be in conformity with the provisions of the fourth section.

The rates to be condemned were made by combination on Jacksonville, the factors south of Jacksonville being the class M rates and north the class D rates. Some of the shipments moved via Jasper, Fla., others via Lake City, Fla., and some via Perry, Fla., to Adel, Ga., and the Georgia, Southern & Florida to destination. None of the shipments moved through Jacksonville. At the time the shipments moved there were combinations via the routes of movement and via other routes lower than the combination on Jacksonville which was collected. Complainant contended that the rates charged were in violation of the fourth section and unreasonable to the extent that they exceeded the lowest combination via any route.

Examiner Wagner proposed that the Commission should reiterate what it had frequently held, viz., that the fair measure of the reasonableness of a joint through rate which exceeds a combination between the same points via the route of movement is the lowest combination that would apply if the joint rate were cancelled. It was upon the application of that rule that Wagner recommended the finding of unreasonableness.

## RECOMMENDS DISMISSAL OF ZINC ORE CASE

A recommendation that the complaint be dismissed has been made by Examiner F. H. Barclay, in a tentative report on No. 10807, Illinois Zinc Co. et al. vs. Missouri Pacific et al., on a holding that the rates on zinc ore from Joplin, Mo., Miami, Okla., and Platteville, Wis., to La Salle and Peru, Ill., on spelter and sheet zinc from La Salle and Peru to eastern trunk line and New England territories; and the aggregate rates on zinc ore inbound to Peru and La Salle, and either spelter or zinc sheet outbound to the before mentioned eastern territories, are not and have not been unreasonable or unduly prejudicial.

The complainants are zinc smelters at Peru and La Salle who think that the rates on zinc ore from the points mentioned to the smelting points in Illinois and the rates on the products out unduly favor their competitors at other smelting points throughout the country, and especially those at Mineral Point, Wis., and Depue, Ill. The Mineral Point and Depue smelters intervened in opposition to the complaint, and the conclusion of the examiner, if adopted by the Commission, will have the effect of leaving the rate situation unchanged. The complainants tested their rates by applying to them the average ton-mile earnings on all freight to show that the rates on the ore are higher than the average of all freight. The examiner said that while that average of all freight might be as the complainants said, the "acid test" of rates on low grade commodities, the complainants did not draw any line to indicate their view as to when the products of zinc ore ceased to be low grade commodities. He suggested that, so far as their showing is concerned, there is no difference, in a transportation sense, between zinc sheets and sheets prepared for etching.

## CONDEMNS COPRA RATE

A finding of unreasonableness and an award of reparation are recommended by Examiner W. H. Archer in a tentative report on No. 11258, Procter & Gamble Manufacturing Co. vs. Staten Island Rapid Transit Co. et al. Archer holds that the minimum fifth class rate of 9 cents per 100 pounds as applied to 27 carloads of copra shipped from the Vandam warehouse at Mariner's Harbor, Staten Island, N. Y., to Port Ivory, N. Y., was unreasonable to the extent that it exceeded 6 cents, to which basis, he thinks, the Commission should order reparation. The complainant sought a rate of 2.5 cents, but the examiner thought that that rate would be about too much below normal as the 9-cent rate was above a normal rate on the dried meat of cocoanuts.

The copra involved in this case was stored in a warehouse about 1.5 miles from the warehouse of the complainant at Port Ivory. It was put there in August, 1918, and moved in February and March, 1919. Request for a rate of 2.5 cents was made in August, 1918, and on March 12, 1919, that rate was authorized. Shipments, however, were made before the rate authority was issued and the railroad opposed the retroactive application of the rate. It claimed it knew nothing about the negotiations that took place between the complainant and the Railroad Administration, else there would have been opposition to the grant of such a rate.

## WOOD ALCOHOL RATE NOT UNREASONABLE

Examiner Bronson Jewell, in a tentative report in No. 11445, Berry Brothers, Inc., vs. Chicago & North Western et al., holds that the rate applicable on wood alcohol in tank cars from Ashland, Wis., to Detroit, Mich., moving in the latter part of 1917 and January, 1918, was not unreasonable and that reparation should be denied.

Charges were collected on the shipments, which moved over the lines of the Chicago & North Western to Saxon, Wis., the Duluth, South Shore and Atlantic to Mackinaw City, and the Michigan Central beyond, at the rate of 24.7 cents, but later the defendants claimed that the applicable rate was 43.5 cents and collected the difference on one car.

The examiner said that prior to September 20, 1917, the lowest combination rate over the route of movement was 38.4 cents, composed of the proportional rate of 20 cents to Mackinaw City, and the fifth-class rate of 18.4 cents beyond. On that date this combination was increased to 41 cents. He said the defendants admitted that there was an overcharge on the one car on which the rate of 43.5 cents was collected and that this should be refunded. The undercharges on the other shipments should be collected, the examiner says.

The complainant contended that under the agency tariff of the trunk lines serving the territory involved, the applicable rate on the shipments by the route of movement was a through commodity rate of 24.7 cents. The examiner, however, did not sustain that contention, but held that the combination rate was the legally applicable rate.

As the Director General was not named as a defendant, the examiner said, the report did not consider the rate assessed on the shipments which moved in January, 1918.

## NEWSPRINT RATE UNREASONABLE

A finding of unreasonableness and an award of reparation have been recommended by Examiner E. L. Gaddess, in a tentative report on No. 11494, Waco (Tex.) Chamber of Commerce vs. Big Fork & International et al. The complaint was against released rates on newsprint paper from International Falls, Minn., and Fort Frances, Ont., to Waco. The rates assailed varied from 69 cents to $1.99 from International Falls, depending on values, and from 86.5 to $1.99 from Port Frances, also depending on the declared or released value of the tonnage.

The complainants alleged that the rates were illegal and unreasonable because they were made on released values, without authority, and unreasonable because they exceeded 48 cents prior to June 24, 1918, and 60 cents thereafter.

Gaddess recommended a holding that the rates from International Falls were unlawful because no authority to make rates dependent on values was ever given by the Commission, but that no such holding be made as to the rates from Fort Frances because authority of the Commission to control rates from Canada to points in the United States does not exist.

The examiner specificially recommended that the Commission hold the rates for the future will be unreasonable to the extent that they exceed the ton-mile basis contemporaneously maintained from International Falls to Muskogee, Okla., prescribed by it in World Publishing Co. vs. Director-General, 53 I. C. C. 491, and that reparation be awarded to that basis.

## CONDEMNS SILICA SAND RATE

Examiner H. W. Archer, in a tentative report in No. 11518, Century Glass Sand Company vs. Director-General, as agent, recommends an award of reparation based on a finding that a rate of $1.80 per net ton on silica sand from Imperial, W. Va., to Pennsboro, W. Va., was unreasonable to the extent that it exceeded $1.40, a subsequently established rate. The shipments

moved in the period between July 25 and November 10, 1919. The complainant compared the rate of $1.80 with a rate of $1.40 from Dunbar, Pa., and Berkeley Springs, W. Va., to Pennsboro, W. Va., involving a longer distance that between Imperial and Pennsboro. The rate of $1.40 was made effective December 10, 1919.

## RATE ON ICE NOT UNREASONABLE

A legally applicable commodity rate of 10½ cents per hundred pounds on ice in carloads from St. Louis, Mo., and East St. Louis, Ill., to Chicago, Ill., was not unreasonable and the complaint should be dismissed, Examiner E. L. Beach proposes in a tentative report in No. 11521, Swift & Co. vs. Director-General, as agent. A Class E rate of 12½ cents was charged on some of the shipments and the overcharge should be refunded, the examiner finds. The complainant sought reparation down to the basis of an 8-cent rate, which was in effect in the reverse direction. The defendant said that rate had been established to induce a movement of natural ice from harvesting points in Illinois and Wisconsin to St. Louis and East St. Louis and that it was subnormal. It further contended that the 8-cent rate claimed was too low and that the rate charged was not unreasonable. The shipments involved moved during the period March 29 to July 27, 1919.

## CATTLE AND HOG RATE UNREASONABLE

It is the opinion of Examiner John T. Money, expressed in a tentative report on No. 11240, Wilson & Company, Inc., of Oklahoma City vs. A. T. & S. F. et al., that the rates on cattle and hogs, the latter in either single or double decked cars, from Sioux Falls, S. D., to Oklahoma City, and on hogs, single or double decked cars, from Sioux Falls to Oklahoma City, were unreasonable and that reparation should be awarded. The report embraces No. 11077, Morris & Co. vs. Same.

Complainants compared the rates under attack with rates prescribed by the Commission in docket No. 1716 and pointed out that they were generally more out of line with the scale prescribed in that case than rates from Chicago and St. Paul to Oklahoma City.

Examiner Money recommended a holding that the rates on hogs in single deck cars should not exceed 58 cents with a 17,000 pound minimum; 54 cents in double deck cars with a minimum of 22,000 pounds and that reparation should be made to that basis. The existing rates are 63 and 67 cents. While the complaint mentioned rates on cattle the attack was confined to the rates collected on what the carriers insisted were sporadic movements of hogs late in 1917 and early in 1918. Since that time they said there have been no movements.

## REFUSAL TO ACCEPT NOT UNREASONABLE

According to the view of Examiner E. L. Beach, expressed in a tentative report on No. 11534, Transcontinental Freight Co. vs. Director-General, as agent, the refusal of the agent of the Chicago & North Western to sign a bill of lading on six carloads of machinery offered for shipment from Chicago to various Pacific coast ports for export, twenty minutes after the time for closing the freight house on June 24, 1918, did not result in unreasonable or otherwise unlawful charges on them.

The bill of lading was tendered at 5:20 o'clock, or twenty minutes after the closing time. Signature was refused on positive instructions from the foreman of the freight house. At least one bill of lading was signed for the complainant after 5 o'clock on that day. In effect, the complainant contended that it was unreasonable for the agent to refuse his signature, because he had attached it after 5 o'clock on that and other days.

No attack was made, the Examiner said, upon the reasonableness of the rule closing the freight house at 5 o'clock. He construed the complaint to be that the refusal was unreasonable because on other days the agent had signed after the closing hour. The refusal on June 24, however, was costly to the complainant because on the next day general order No. 28 became operative and domestic rates applied on the export shipments, which, in this case, were accepted on July 1. The examiner said that of course the rate applicable was the one in effect on the day the shipment was accepted, hence his recommendation that the complaint be dismissed.

### INTRA-STATE HEARING AND ARGUMENT

The Commission has set the Nevada intrastate rate case, in which the railroads operating in that state ask application on intrastate traffic the same percentages of increase authorized on interstate traffic by the Interstate Commerce Commission, for hearing before Examiner Healy at Carson City, Nevada, December 1. The Nevada commission declined to authorize any increases on intrastate traffic.

Oral argument in the South Carolina intrastate rate case will be held before the Commission at Washington, November 29.

## SWITCHING CHARGES AT RICHMOND

(U. S. Supreme Court Decision.)

No. 27.—October Term, 1920.

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| Seaboard Air Line Railway Company, Seaboard Air Line Railway, Southern Railway Company, and Atlantic Coast Line Railroad Company, Appellants. vs. The United States of America, the Interstate Commerce Commission, and the Richmond Chamber of Commerce. | Appeal from the District Court of the United States for Eastern District of Virginia. |

(November 8, 1920.)

Mr. Justice Day delivered the opinion of the court

In this case a petition was filed in the District Court of the United States for the Eastern District of Virginia to enjoin an order of the Interstate Commerce Commission concerning the absorption of switching charges on the lines of the Seaboard Air Line Railway Company, the Seaboard Air Line Railway, Southern Railway Company and Atlantic Coast Line Railway Company within the switching limits of these roads as established at Richmond, Va.

The Commission's order was made upon a petition of the Richmond Chamber of Commerce averring that the practice of the railroads was discriminatory and unlawful and violative of section two of the act to regulate commerce. From the facts found by the Commission it appears that the appellant railroad companies bring freight from the south to Richmond, Va., where the same is delivered to industries in the switching limits of that city. If the freight is received at a point served by any two or more of the carriers, the switching charge is absorbed if the freight be delivered on the line of either. But if the delivery is to an industry served only by a non-competitive carrier the switching charge is not absorbed. The Commission illustrated the point by an example: "Oxford, N. C., is a point reached both by the Southern and the Seaboard, but not by the Chesapeake & Ohio. Norlina, N. C., is a local point on the Seaboard. Assume that industries A, B and C (referring to a diagram) on the Seaboard, the Southern and the Chesapeake & Ohio, respectively, are similarly located with regard to the interchange tracks of the three carriers at Richmond. On traffic from Oxford to industry B on the Southern, the Seaboard will absorb the Southern's switching charges. But on traffic from Oxford to industry C, on the Chesapeake & Ohio, the Seaboard refuses to absorb the Chesapeake & Ohio's switching charges. On traffic from and to Norlina, a local point, however, the Seaboard refuses to absorb all switching charges whatsoever to any off-line industry."

The order complained of directed the three carriers to cease and desist on or before August 1, 1917, and thereafter to abstain, from absorbing switching charges on certain interstate carload freight at Richmond, Va., while refusing to absorb such charges on like carload shipments for a like and contemporaneous service under substantially similar circumstances and conditions, such practices having been found in a supplemental report to be unjustly discriminatory and unlawful within section two of the act to regualte commerce; and "to establish, on or before August 1, 1917, . . . and thereafter to maintain and apply uniform regulations and practices for the absorption of charges for the switching of interstate carload freight at Richmond, Va., and to collect no higher rates or charges from shippers and receivers of such carload freight at Richmond, Va., than they contemporaneously collect from any other shipper of such carload freight at Richmond, Va., for a like and contemporaneous service under substantially similar circumstances and conditions." 44 I. C. C. 455.

The District Court denied the application for an injunction and ordered that the petition be dismissed. 249 Federal 368.

The contention of the appellants is that the transportation is not a like and contemporaneous service of a like kind of traffic under substantially similar circumstances and conditions.

Section 2 of the act to regulate commerce provides:

"That if any common carrier subject to the provisions of this act shall, directly or indirectly, by any special rate, rebate, drawback, or other device, chare, demand, collect, or receive from any person or persons a greater or less compensation for any service rendered, or to be rendered, in the transportation or passengers or property, subject to the provisions of this act, than it charges, demands, collects, or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions, such common carrier sholl be deemed guilty of unjust discrimination, which is hereby prohibited and declared to be unlawful." (24 Stat. 379.)

Upon this controversy the Commission in its report said: "Complainant insists that when the line-haul carrier reaches the common point and competes for the traffic to or from Richmond proper, the absorption of the switching charges should not be confined to that traffic for which the switching line competes for the entire haul. That is, if the Seaboard absorbs the switching charges for the shipper on the terminal tracks of the South-

ern, it should also absorb the switching charges for the shipper on the terminal tracks of the Chesapeake & Ohio. Unless this is done, complainant contends that the two shippers are not upon an equality, since the Seaboard pays for a delivery service to shippers on the terminal tracks of the Southern and declines to pay for a similar delivery service to shippers on the terminal tracks of the Chesapeake & Ohio. . . .

"Section 2 is primarily directed against discrimination between shippers located in the same community. It is aimed to put all shippers within a switching district upon a substantial equality. It provides that where a carrier receives from any person a greater compensation for any service rendered in the transportation of passengers or property than it receives from any other person for doing for him a 'like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions, such common carrier shall be deemed guilty of unjust discrimination,' a discrimination which is prohibited and declared to be unlawful. Under this section it is settled that the competition of rival carriers as such does not constitute substantially dissimilar circumstances to justify a difference in treatment."

We are of opinion that the Commission was correct in regarding the service in question as a like and contemporary service rendered under substantially similar circumstances and conditions, and amply sustained as matter of law in Wight vs. United States, 167 U. S. 512, and Interstate Commerce Commission vs. Alabama Midland Railway Company, 168 U. S. 144. The principle established in these cases is that the statute aims to establish equality of rights among shippers for carriage under substantially similar circumstances and conditions, and that the exigencies of competition do not justify discrimination against shippers for substantially like services.

Moreover, the determination of questions of fact is by law imposed upon the Commission, a body created by statute for the consideration of this and like matters. The findings of fact by the Commission upon such questions can be disturbed by judicial decree only in cases where their action is arbitrary or trenscends the legitimate bounds of their authority. I. C. C. vs. L. & N. R. R. Co., 227 U. S. 88; Pre-cooling Case, 232 U. S. 199; Los Angeles Switching Case, 234 U. S. 294, 311, 312 and cases cited; Penn. R. R. Co. vs. United States, 236 U. S. 351, 361.

The Commission did not hold that switch charges must be always the same. But did hold that they must be alike where the service was rendered under substantially similar circumstances and conditions. The Commission's report says:

"We do not consider that the carriers must absorb the switching charges indiscriminately to all industries within the switching limits of Richmond if they choose to absorb the switching charges to any one industry off their rails. The illegality herein found to exist is the receiving of a greater compensation for one service than for a like service under substantially similar circumstances and conditions. To take a concrete example and referring again to the diagram. Suppose industry C were 5 miles distant from the interchange tracks of the Seaboard, while industry B were only 2 miles distant. Suppose the Chesapeake & Ohio's switching charge amounted to \$5, while that of the Southern was \$2. If the Seaboard absorbed the Southern's \$2 switching charge on traffic to industry B, we do not consider that it must absorb the entire \$5 switching charge of the Chesapeake & Ohio on traffic to industry C, but only to the extent to which the service is similar. In other words, it would probably be necessary for the seaboard to absorb \$2 of the \$5 charge of the Chesapeake & Ohio."

The practice condemned by the Commission, as its report and order show, was that of absorbing switching charges only when the line-haul carrier competes with the switching line, and refusing to absorb such charges when the switching line does not compete with the line-haul carrier; this, the Commission held, was discrimination within the meaning of section 2 of the act to regulate commerce. We find no occasion to disturb this ruling as arbitrary in character or beyond the authority of the Commission.

We find no merit in the contention that the order of the Commission was too vague and uncertain to be enforced. Affirmed.

## SECTION 28, SHIPPING ACT

*The Traffic World Washington Bureau*

Admiral Benson, chairman of the Shipping Board, said November 13 that as soon as the new board had been organized, immediate consideration would be given to the question of putting in operation the provisions of Section 28, of the merchant marine act, which prohibits the application of export and import rail rates to cargoes carried in vessels not documented under the laws of the United States.

The provisions of the section were made inoperative until January 1, 1921, by the Interstate Commerce Commission, which acted on a certificate from the Shipping Board, setting forth that there were not adequate shipping facilities under the American flag to meet the requirements of the law.

The section provides that "no common carrier shall charge, collect, or receive, for transportation, subject to the interstate commerce act, of persons or property, under any joint rate, fare or charge, or under any export, import, or other proportional rate, fare or charge, which is based in whole or in part on the fact that the person or property affected thereby is to be transported to, or has been transported from, any port in a possession or dependency of the United States, or in a foreign country, by a carrier by water in foreign commerce, any lower rate, fare or charge than that charged, collected or received by it for the transportation of persons, or of a like kind of property, for the same distance, in the same direction, and over the same route, in connection with commerce wholly within the United States, unless the vessel so transporting such persons or property is, or unless it was at the time of such transportation by water, documented under the laws of the United States."

Provision is further made for suspension of the above when the board finds inadequate shipping facilities documented under the American flag.

The chairman indicated that the section might be made operative only as to certain ports of the United States and that as to other ports the Interstate Commerce Commission would be requested to suspension the section beyond January 1, 1921.

Admiral Benson said that in the organization of the new board each of the commissioners would have supervision over a particular administrative duty under the merchant marine law. Commissioner Goff, who has been head of the legal department, will have general supervision over legal matters.

## BENSON TALKS OF BOARD

Although no direct mention of the charges made against the United States Shipping Board in the report to the select committee of the House on Shipping Board operations was made by him, Admiral Benson, chairman of the Board, in his first address since the charges were made public, declared: "It is an easy matter for any one to pick flaws in an organization like the Shipping Board," and: "It is so easy to tear down a structure."

The address was made November 15 before the annual meeting of the South Atlantic Ports Association at Charleston, S. C.

"It is a pleasure to address my fellow citizens whose close contact with shipping matters makes them familiar with the tremendous problems the Shipping Board has endeavored to solve since the war emergency placed responsibility of ship operation upon the shoulders of the members of the board," said he. "When I was honored in March of this year by an appointment to the board and elected by its members as chairman, I knew what a responsibility I faced. The air was filled with discussions as to matters bearing upon legislation affecting the activities of the board. A man's job faced me. I knew what problems my predecessors had been confronted with, and I knew in taking up their work as chairman, it was no child's play.

"It is so easy to tear down a structure. One of the first obligations of parenthood is to point out to a child the difference between wanton destruction on one side, and the care and use of a thing on the other. I have noticed this destructive tendency in men—this desire to pull down over night what has been accomplished as the result of years of work.

"The Shipping Board is an organization that reaches out to all parts of the world with branch offices in many of the most important cities of the country and continental Europe as well as South America. It has for its purpose, as you well know, the building up of a permanent merchant marine. It is a duty of all Americans to advocate that this be done in the most friendly spirit. We should always bear in mind that other nations are more dependent upon a successful merchant marine than the United States. We should always take into consideration that due to the destructiveness of war those who are associated with us in defeating the enemy suffered tremendous maritime losses. It would be unfair for us to forget this in our effort to win world trade. However chivalrous we should be, no foreign shipping interest should attempt to take advantage of that chivalry—no foreigner should endeavor to dictate to us where or under what conditions our ships are to run.

"I never tire pointing out the remarkable result of the shipbuilders of the United States during times of stress. Through their efforts the United States accomplished one of the biggest construction jobs ever recorded. No real thinking man will deny that the merchant marine we have today is the remarkable result of American pluck, perserverance and patriotism. The steamship operators, the merchants and manufacturers of the South and the Gulf ports must know of the work the Shipping Board has been accomplishing in the development of the steamship services from Southern and Gulf ports.

"Early in the spring of 1920 in New York City, as chairman of the Shipping Board, I announced that in planning steamship services the Board proposed to break up the monopoly heretofore held by a few Atlantic ports. Services will be maintained at American ports with the view of relieving congestion of railroads and of bringing goods to the seaports nearest the point of consumption. This is the policy the Board has been following out.

"The monopoly of overseas shipping heretofore held by a

few of our largest seaports retarded the early development of our merchant marine. This monopoly spread a spirit of indifference to many of our most important commercial interests. It was responsible for short-sighted policies which prevented the building up of proper facilities for the loading and discharging of vessels in the most efficient manner. The feeling of security that these large ports possessed because of their confidence that no effort could be made to spread out along scientific lines the steamship services had much to do with lack of development and proper growth of the shipping business in this country. During the last six months I have kept a careful watch of the work involved in spreading our shipping to bring about the logical development of all our ports. It is my belief that we have made some progress in this direction and that the spirit of competition between the various seaports of this land is to the advantage of all.

"There is no desire on the part of the Shipping Board to shirk responsibility, but in fairness to the thousands of men who are associated with me in the work of making possible a permanent merchant marine I must ask my fellow citizens to remember that that laconic sign you meet so often at the railroad crossings, 'Stop, Look and Listen,' is a warning which we all should have in mind, no matter what is before us, and I would add to the three words, one word, which I believe will be very helpful at this time, 'Think.'

"Think of the far-sighted policy which brought about the Shipping Act in the latter part of 1916, which piece of legislation made possible the huge undertaking that helped in a large measure to solve some of the most trying situations this world ever faced. The shipbuilders of the United States made possible the carrying overseas of approximately 95 per cent of the supplies for the American fighting forces at the front. More than nine hundred thousand men went across in American bottoms. This was a war work made possible by splendid team work of the ship builder, the ship operator, the Army and Navy and the Shipping Board.

"Think of what would have happened if at the signing of the armistice, the United States Shipping Board had not possessed the courage and vision of men like Edward N. Hurley, who, notwithstanding the cry raised during the war, went ahead with peace conditions in mind and carried forward for peace purposes what remained of the construction program launched during the war.

"Think of what world problems we might have been faced with today, if when Herbert Hoover raised the cry for food to feed the starving people of Europe, we had failed in that humanitarian work, because we had no ships available to carry our supplies overseas.

"What would happen today if the world faced a virtual monopoly of shipping?

"Do not forget that the ruthless enemy practically wiped out a good part of the most efficient type of overseas shipping. If America had not by its shipbuilding made up for this slack in world shipping, ocean rates would be soaring today, and the control of the world shipping would virtually rest in the control of one country.

"When all is said and done, men of vision will take into consideration the whole picture presented by shipping problems.

"My predecessor, John Barton Payne, had a heavy responsibility placed upon him when he stepped into the office made vacant through Mr. Hurley's resignation. Thousands of claims, amounting to millions of dollars, the jobs of more than 300,000 men involved in the settlement of these claims, problems of reconstruction, are only a few of the many pressing matters that came before him in a day's work.

"You can readily see the need of shutting off many of the shipbuilding activities following the signing of the armistice. But you will also agree, I am sure, that the men in charge of the settlement of these many problems had to take into consideration the problems of reconstruction, such as the need of employing our returning soldiers, more than 50,000 of which were given work shortly after their return from abroad, and the fear of sudden stoppage of work, causing undue injury to patriotic men, had also to be borne in mind.

"It is an easy matter for anyone to pick flaws in an organization like the Shipping Board. We had to train 300,000 shipbuilders, and in the manning of our ships we have had to train thousands of men. The Sea Service Bureau alone placed a total of 160,861 officers and men during the fiscal year ending June 30, 1920. The last twelve months out of one office alone New York branch of the Sea Service Bureau 37,271 officers and men were placed on American ships. Of course, in an organization of this magnitude, you will find here and there evidences of wrongdoing, and now and then you will uncover a systematic effort to defraud. It was necessary for the Shipping Board to employ men whose sole responsibility was the uncovering of wrongdoing, and these men were charged with a heavy responsibility. The men who we depended upon to be checks upon those who might be tempted to do wrong bear a heavy responsibility if they failed us, but in an organization spending more than three billion dollars, where, as the largest steamship operator in the world, millions of dollars are expended from day to day, it would be humanly impossible to prevent all wrongdoing or to do business without suffering financial losses from time to time.

"There is no effort on our part to shirk whatever responsibility we have assumed. We have insisted that at all times the records are open to the public. Every facility is offered to those who desire information.

"As a former naval officer who shipped forty-eight years ago to serve his country, I believe my fellow countrymen can depend upon it that no wrong doer will escape if his wrong doing is called to my attention. Not only have I insisted upon the closest watch upon all matters, but I have followed the work of the Shipping Board in every port of the world with the one thought in mind that we are now reaching that crucial moment which spells either the success or failure of a permanent merchant marine.

"It is your responsibility as well as mine, the establishment of this permanent merchant marine. It is the responsibility of every newspaper publisher in America, and I have time and time again called upon the press and they have met me in a noble manner to spread this message before the world—that America is now ship independent—that America means to have a permanent merchant marine, and that God willing, I shall do everything within my power to make a successful permanent merchant marine, privately owned and controlled for the interests of the United States.

"You men of the south have a peculiar responsibility. Announcing as I did in the port of New York that we would spread shipping throughout the country, it was with the hope and the belief that when the task was presented to the men of the South and the Gulf, that they would meet the issue and I believe results show that they have done splendidly up to the present time. Records of the Shipping Board show that we have allocated many ships to the southern ports and these ships have entered into services to many parts of the world, carrying products of America in ships owned and controlled by Americans. The following may be of interest:

SUMMARY OF UNITED STATES SHIPPING BOARD TONNAGE OPERATING OUT OF THE FOLLOWING PORTS.

| Place. | No. | D. W. T. |
|---|---|---|
| Wilmington, N. C. | 1 | 3,515 |
| Charleston, S. C. | 6 | 34,283 |
| Savannah, Ga. | 28 | 174,211 |
| Jacksonville, Fla. | 23 | 134,758 |
| Brunswick, Ga. | 2 | 7,680 |
| Tampa, Fla. | 11 | 53,076 |
| Mobile, Ala. | 35 | 173,344 |
| New Orleans, La. | 101 | 617,228 |
| Galveston, Tex. | 68 | 454,888 |

"The above figures speak for themselves.

"And now I may be pardoned if I touch upon a matter which is purely personal and sentimental. I was born in Georgia, educated there and at the age of seventeen entered the service of my country. In the forty-seven years I served in the Navy I gave to my country the best that was in me. Whatever I own, whatever I have was pledged to the service when I shipped, and now that I am serving as head of the United States Shipping Board, I feel a peculiar pride in this privilege to continue in the service of my country. And I may say that charged with the vast responsibility as chairman of the Shipping Board, I would be cowardly if I refused to exercise to the best of my judgment, those powers vested in me. If mistakes have been made they were mistakes that naturally may be expected in such a stupendous enterprise involving as it does the active employment of more than 1,600 sea-going vessels with the manifold problems involved in ship operation; the completion of a huge shipbuilding program embracing the payment of millions of dollars and the settlement of thousands of claims which come as a result of an effort to be fair to those men who, when we needed them, placed their facilities at our disposal and endeavored to do everything within their power to help this country in its shipbuilding program.

"We are engaged in no child's play, our effort is world-wide. Our work reaches into every part of the world, it affects every interest. It is your business to watch this development and to critically examine our work from day to day. It is your business to question what we do. It is a good thing that men are awakened to the splendid opportunity shipping affords, but while it is no child's play to build up this vast world-wide organization, I do say it is a child's play on the part of anyone who heedlessly spreads erroneous impressions which tend to destroy confidence in our ability to maintain, support and develop a permanent merchant marine, privately owned. All we ask is constructive criticism. We are in close touch with the best operating men of the country. They have appointed a standing committee which is the connecting link between the Shipping Board and the ship operators.

"Recently the new agency agreement for the operation of the Shipping Board's fleet was adopted, after months of exhaustive study, by the committee on agents' agreements, composed of representatives of the Board and all the steamship associations of the country. It bears the unanimous recommendation of that committee, and, therefore, has the support and backing of the steamship men themselves—both owners and non-owners. On

the recommendation of the steamship men the Board, after most careful consideration, decided to make this agreement follow along the lines of the ordinary commercial agreement that has been in use for many years by private steamship owners for the management of their ships. Under this agreement the agent will get nothing at all if he lets a ship lie idle. His commissions being based on the freight collected, he must, in order to make anything, not only secure cargo for the ship, but secure it at the best possible freight rates and dispatch the ship quickly. There wil be no money under this agreement for the manager who lets the vessel lie in port, or who loads her only a third full, or at rates that are too low. Full cargoes, so far as possible, the best freight rates obtainable, and quick turnarounds of the vessel on her voyages are the secret of success for both the manager and the Shipping Board under this agreement.

"The Board for a time urged upon the standing committee a revised profit-sharing plan, being a revision of the plan which has actually been in operation for some time and which has proved unsatisfactory. Any profit-sharing plan, however, was finally discarded, and I think justly, when analysis shows that even the most efficient management of ships may not show profit in the immediate future, with ocean freight rates rapidly falling in the face of foreign competition, and that if there was risk of loss, it should be borne, not by the managers of the ships (provided they are efficient), but by the Board, as part of the task entrusted to it by the American people of building up a permanent American merchant marine. Furthermore, any profit-sharing plan greatly complicates the accounting, whereas the agreement now adopted has the great asset of simplicity. It is easily applied to all trades and all voyages. It fits every situation.

"It was made retroactive to March 1, 1920, because from that date to the present the accounts with the Board's ship managers have never been finally adjusted, and the compensation to the managers for their services commencing March 1 has been suspended pending the final adoption ofthis agreement. Of course, the agreement will not become effective between the Board and any particular manager until it has been signed by the Board and that manager. If, therefore, it should appear that in any particular case injustice would be done by making the agreement retroactive to March 1, that particular case will have to be handled upon its merits and such reservations and exceptions made as are deemed necessary.

"I can sum the whole matter up by saying that a long step forward has been taken in getting a simple agreement which makes the manager work for his compensation and rewards him when he does—an agreement which has the recommendation of the steapship men of the whole country who are to work under it and who are, therefore, responsible for its success. But this should not be a final stopping place. There should be further progres. With the assistance of these same steamship men the Board now wants to comence the working out of a further plan whereby the manager will become responsible for the expenses of the vessel, as well as for her gross earnings, and where he will be gradually given almost complete independence of operation, and where, as a consequence, the Board's personnel and overhead expenses, particularly in foreign ports, will be greatly reduced. When this can be brought about and the managers are operating the ships, free from the Board's supervision and assistance, independently, in stabilized trades, where the vessels have proced their value, then the American people, led by these steamship managers, will buy the ships, and a great desideratum —privately owned American merchant marine—will be accomplished."

## AWARD TO LONG ISLAND R. R.

*The Traffic World Washington Bureau*

An award of compensation at the rate of $3,258,000 per annum, for the Long Island Railroad will be announced soon by the board of referees composed of J. J. Hickey, James Quarles and George M. Curtis. Judgment to that effect was rendered from the bench by the referees notwithstanding the fact that the case was the hardest fought that had yet come before referees appointed under the transportation act to adjudicate disputes between the Railroad Administration and railroads whose property was taken over by the government.

It will be a consent award because, after fifteen or twenty days of the bitterest hearings, the attorneys for the railroad and the Railroad Administration reached the conclusion that $3,258,000 would be a fair rental for the government to pay. At one time in the taking of testimony, J. J. Hickey, chairman of the board, had to peremptorily order attorneys for the Railroad Administration to produce letters signed by A. J. County, vice-president of the Pennsylvania and vice-president and auditor of the Long Island "without further argument." Hickey had to resort to strong language to bring the irritated lawyers to a realization that they would have to proceed in an orderly way and observe the rules for the conduct of a proceeding of that kind.

LaRue Brown, one of the attorneys for the Railroad Administration, in summing up the case, announced that the Railroad Administration had been convinced by the testimony produced by the Pennsylvania's Long Island branch that the sum mentioned would be fair compensation. In view of the fact that before that time the Railroad Administration and the railroad company were so far apart that the Railroad Administration never made an offer of compensation, as a matter of record, the conclusion announced by Mr. Brown was surprising. The attorneys for the railroad announced that they had been convinced by the testimony brough forward in behalf of the government showed that $3,258,000 would be proper compensation.

The railroad claimed $4,000,433 as the minimum. The dispute was largely as to the value in use of improvements under way when the property was taken over. There was not even agreement as to what the improvements had cost at the time of the taking.

A formal award will be made and sent to President Wilson because the law requires a report. The Railroad Administration will pay as soon as the routine can be observed.

## G. M. & N. FINANCES

*The Traffic World Washington Bureau*

The Gulf, Mobile and Northern Railroad Company, by an order of the Commission in Finance Docket No. 99, has been authorized to issue $4,000,000 of first mortgage, 6 per cent gold bonds to be dated October 1, 1920, and to mature October 1, 1950.

The order also authorizes the company to pledge $816,000 of the bond issue as security for promissory notes to be given in renewal of outstanding bank loans, and also to pledge $1,030,000 of the bond issue with the Secretary of the Treasury as security for a loan of $515,000 from the United States.

The company is further authorized to pledge $960,000 of the bond issue as security for the company's indebtedness of $480,000 to the Director-General of Railroads, which is to be funded by the government under the terms of the transportation act.

The remainder of the bond issue, $1,194,000, will be held in the company's treasury, to be pledged from time to time, in whole or in part, to secure short term notes for the issue of which the authority of the Commission is not required.

The Commission sets forth in its report of the case that the applicant has expended the sum of $3,775,779.27 for additions and betterments during the period from December 31, 1916, to July 31, 1920, and that it intends to expend the proceeds of the loan of $515,000 from the federal revolving fund for new equipment and other additions and betterments, making the total of such expenditures, $4,290,779.27. The loan of $515,000 to the company has been approved by the Commission.

## ALL IN TWENTY-FIVE YEARS

The National Automobile Chamber of Commerce has just issued an interesting bulletin under the caption "Railroads Get Big Revenue From Automobile Industry."

Among the statements emphasized are the following: "Five hundred thousand cars per year are needed to carry automobiles, trucks and finished parts, exclusive of unfinished materials.

"Five hundred seventy thousand seven hundred thirty machines have been delivered over the highways in the last 21 months, a potential railroad business of an additional 170,000 carloads.

"Freight bill on finished product alone exceeds $100,000,000 annually.

"Gasoline, oil and accessories required by car users swell the volume of railroad freight business.

"Express and passenger departments also profit."

### SUSPENDS U. S. MONEY PROVISION IN TARIFF

The Commission on November 16, by an order in Investigation and Suspension Docket No. 1191, further suspended from November 17, 1920, to December 17, 1920, the operation of Rule No. 23 of F. W. Gomph, agent, Supplement No. 9 to I. C. C. No. 378, providing that rates published in the tariff are payable in United States currency or its equivalent.

The rule suspended, if made effective, would require freight charges on shipments to Canada or Mexico to be paid in United States currency, but the tariffs do not provide for prepayment of freight charges. Tariffs requiring prepayment also have been suspended by the Commission in another investigation which is pending.

### CONGESTION AT HAVANA

A cablegram received by the Department of Commerce from Havana, Cuba, November 15, stated that the congestion at the docks was growing rapidly worse because of the inability of importers to pay duties, a circumstance due to the moratorium. At the time the cablegram was sent twenty-nine vessels were discharging at the dock, nineteen were discharging in the harbor, and twenty were awaiting discharge. In addition, eleven schooners were unloading their merchandise and twenty-three were awaiting to unload.

The cablegram stated that conditions reported a month ago gave indications of improvement which has not been realized.

# State Commissioners' Annual Meeting

## Coal for Public Utilities—Report on Railroad Rates—Long and Short Haul Discrimination—Passenger Fares—Valuation—Grade Crossings and Trespassing

*The Traffic World Washington Bureau*

Chairman Clark of the Interstate Commerce Commission, continuing his statement as to the position of the Commission with respect to local car distribution before the National Association of Railway and Utilities Commissioners, November 11, said that if the state commissioners formulated rules as to car distribution that were not made the subject of attack before the Commission, "I can assure you we have enough to do here without going out to look for trouble."

The orders of the Interstate Commerce Commission relating to the transportation of coal, the Chairman said, needed no defense when there was an understanding of the facts on which the action was taken. He said one of the things the Commission bore in mind was to see to it that the public utilities got coal for current needs but not for storage. Under the service orders, however, he said, some utilities increased their storage supplies, others "connived with outsiders and improperly shipped coal to others," and, as a result, the Commission rescinded the service order giving preference to public utilities in car supply movement. He said that since the Commission had required a showing from public utilities that coal operators were ready to supply coal but could not get the cars in which to move it, not one utility company had come to the Commission.

He said he had been closely associated with Commissioner Aitchison in the administration of the car service section of the transportation act, and that it was not new to be subjected to criticism not based on a full understanding of the facts.

"The disposition of the Interstate Commerce Commission in car service matters is evidenced by the fact that we formed local committees," said Chairman Clark. "We have not had time since the new law became effective permanently to organize our car service bureau. One of the things we plan to do is to establish car service agents throughout the country whom we hope to affiliate with local committees. We realize that it is impossible for any tribunal in Washington to handle all the problems that arise in connection with car service matters."

He said further that "neither in this nor in any other matter has the Commission attempted to enforce any of its views." He said the purpose of the Commission, regardless of any personal views its members might have, was to do the thing it believed best under a given set of circumstances.

Commissioner Funk of Illinois said he was still in doubt as to whether the Interstate Commerce Commission had entered the field of fixing car distribution rules.

Commissioner Aitchison replied that the Commission had not prescribed any rules, but had laid down principles in certain cases. He said, however, that if the Commission should prescribe any rules, those rules would have to be observed and that there could not be two sets of rules. Commissioner Funk expressed the hope that the Commission would issue a statement clarifying the situation. Asked by Commissioner Aitchison whether he believed it to be practicable to have a rule as to car distribution between shippers in Illinois different from the rule for interstate business, Mr. Funk said he doubted it. It was Commissioner Aitchison's idea that if there were discriminations between local shippers as to state business, the state commission ought to be able to work such matters out locally or in co-operation with the bureau of service of the Commission.

Mr. Funk said he believed the terminal committees should be continued and that their jurisdiction should be extended beyond the limits of the cities for which they were appointed so that they could handle situations at country stations.

"That is a good suggestion, and that will be done as far as possible," said Commissioner Aitchison.

A. E. Helm, counsel for the Kansas Court of Industrial Relations, did not believe it was necessary to establish new committees, apparently referring to Chairman Clark's reference to the appointment of car service agents and their affiliation with local committees. He said the state commissions were entirely familiar with the questions involved and were qualified to make rules and enforce them locally. He believed that shippers would be better satisfied to have the questions handled by the state commissions rather than by committees. He said the terminal committees had been appointed to relieve congestion and that they had nothing to do with distribution of cars.

Commissioner Jacobson of Minnesota discussed the shortage of cars for grain in the northwest. Commissioner Aitchison asked whether the time had not passed when grain shippers could expect to ship the entire grain crop as fast as it was produced, and whether storage facilities should not be provided so that the movement of the grain crop could be distributed over a considerable period of time. Mr. Jacobson said he had been trying for two years to get a law through Congress to have the eastern railroads build large warehouses on the Atlantic seaboard for the storage of grain. Mr. Reed of the Kansas Court, said there were storage facilities for seventeen million bushels of grain at Kansas City, but the railroads had not put more than two million bushels in those elevators.

### Coal for Public Utilities

Discussion of the supply of coal for public utilities was revived when a letter from G. W. Elliott, secretary of the National Committee on Gas and Electric Service, was read. The letter was to the effect that a serious situation had developed with respect to the coal supply for public utilities since Service Order No. 16 was rescinded.

Commissioner Aitchison said that during the sixty days the preference order for utilities was in force, the utility companies had special privileges, but they had abused these privileges. He declared that the public utilities had "prostituted the order." Mr. Aitchison declared further that the Commission was now ready to see that coal moved to the necessitous public utilities, but that it was unwilling to bribe the coal operator who had refused to give up to his contract by giving him extra cars to enable him to fulfill his contract. He said that if the utilities would bring their coal operators to the Commission, the Commission would get the representatives of the railroad serving the operators and see to it that the operators got a fair share of cars; but he added that before they got the cars, they would have to tell what they had done with cars previously provided.

Mr. Aitchison said that most of the cases involving the shortage of coal for utilities resolved themselves into questions of price, because enough coal had been and was being produced. He said that price was not a transportation emergency recognized by the transportation act; that coal was being produced and being moved, and that if the utilities could not get it, it was a question of price.

M. H. Aylesworth of the National Electric Light Association, declared that what the utilities wanted was their contract coal and that the Commission ought to obtain delivery of contract coal. Not one utility, he said, had obtained contract coal since the Commission rescinded Service Order No. 16.

Commissioner Aitchison said that many districts serving public utilities had had a 100 per cent car supply but had sold their coal elsewhere because they obtained a better price. He said the Commission could not enforce contracts or regulate the price of coal. He said the time had passed for bribing coal operators with a full car supply in order to get delivery of coal to utilities.

At round table discussions the afternoon of November 11, the question of readjusting gas standards and the relation of public utilities to the public were brought up. Commissioner Burr of Florida, referred to the attitude of the employes of railways and other public utilities toward the public, and said that they could establish good will by courteous and prompt service. He said all claims should be handled promptly, with as little red tape as possible, and that the claims of small shippers should be paid as promptly as those of large concerns; that employes in paying claims should not do so as if they were doing a favor, but should make the claimant feel that he was getting what belonged to him and that the company was glad to meet the obligation.

The public utility companies are not requesting the Interstate Commerce Commission to enforce the delivery of contract coal, but what they want is a sufficient supply of cars to enable them to get coal for their needs, G. W. Elliott, of the National Committee on Gas and Electric Service, told the state commissioners at the morning session, November 12, when discussion of the car situation was resumed. Mr. Elliott is the representative of the utility companies on the committee selected to work out the permit system under Service Order No. 21. His statement with regard to the position of the utilities differed from that made previously by Mr. Aylesworth, who spoke for part of the utility companies and who asked, in effect, that the Commission take steps to enforce delivery of contract coal.

"The whole sum and substance is that we can't get our contract coal because the operators can't get cars," said he. "We are holding no brief for the man who has not made contracts. Commissioner Aitchison asks where the production of coal is going. We can't explain that. We can't ask coal operators to come down here, as has been suggested. We hold no brief for the man who has been playing the market. The abuses referred to by Commissioner Aitchison we grant in a number of cases. We did not justify those cases."

Mr. Elliott said Service Order No. 21 had not been used in any case to get coal for a public utility, and he said what he recommended to meet the situation was that the service order be made operative. Commissioner Ainey of Pennsylvania

said there had been a great deal of "whirling of the machinery of the Interstate Commerce Commission, the railroads and the committee of the utilities," but that nothing was being accomplished. He urged that there be less "machinery" and some results. He referred to a statement made by Commissioner Clark to the effect that not a case had been brought to the Commission justifying action under Service Order No. 21, and Mr. Elliott said the fact that the Commission did not see that cases which had been submitted were urgent was a matter of judgment with the Commission. He asserted shipments of coal to utilities had declined 50 per cent since Service Order No. 16 had been rescinded.

"Service Order No. 21 would meet the situation if it were made to function," said Mr. Elliott."If that order were invoked, the public utilities would get coal. I have nothing to recommend except that Service Order No. 21 be made effective."

Commissioner Smith of Michigan offered a resolution putting the association on record as urging the Commission promptly to take such further action as might be necessary and to give immediate effect to Service Order No. 21.

Commissioner Forward of Virginia called attention to the fact that the Interstate Commerce Commission said Service Order No. 21 was in effect.

President Shaw, speaking from the floor, said he did not think the association should adopt the resolution, as he did not wish to see the association lend its aid to coal operators that might be resorting to unfair methods. Commissioner Ainey of Pennsylvania took a similar position.

Attention was called to the fact that, under the rules, the resolution should be referred to the executive committee for consideration, and that was done.

President-elect Perry announced the appointment of the executive committee for 1920-1921 and of the committee on litigation which will represent the association in the intrastate rate situation. The executive committee is composed of Carl D. Jackson of Wisconsin, chairman; Joseph B. Eastman, interstate commerce commissioner; R. Hudson Burr of Florida; E. I. Lewis of Indiana; Clyde M. Reed of Kansas; Alfred M. Barrett of New York, first district; J. J. Murphy, South Dakota; and James A. Perry of Georgia, president, and James B. Walker, secretary, of New York, ex officio members.

The committee on litigation is composed of Fred W. Putnam of Minnesota, chairman; Dwight N. Lewis of Iowa; W. D. B. Ainey of Pennsylvania; Allison Mayfield of Texas; Joseph A. Kellogg, New York, second district; William G. Busby, Missouri, and R. Hudson Burr of Florida.

The convention adjourned on the afternoon of November 12.

In turning over the office of president to Mr. Perry of Georgia, President Shaw said he expected to leave state commission work and that, therefore, the present convention would probably be the last that he would attend.

### Report on Railroad Rates

In the absence of J. F. Shaughnessy, member of the Nevada commission and chairman of the committee on railroad rates, John E. Benton, general solicitor of the association, submitted that committee's report, which was prepared by Mr. Shaughnessy and represented his views. The report was received for printing.

Referring to the percentage rate increases under General Order No. 28 and under the Commission's recent decision in the advanced rate case, Mr. Shaughnessy declared, "constituted public authority is no more free to lay horizontal rate exactions upon the public than it is to fix such levies upon property," and that "the horizontal increases here under consideration are clearly indefensible and in violation of the equality clauses of the Constitution and cannot be considered as any true measure or guide for the future."

The report stated that the Railroad Administration undertook equalization after General Order No. 28 became effective and that, doubtless, the Interstate Commerce Commission would follow the same practice. The increases under General Order No. 28 should never have been made, the report said, because the railroads were being used as a war facility and not for revenue purposes.

"At the present time the disparity in rates has been so badly intensified compared to pre-war times," the report said, "that a heavy penalty is placed on the people in the producing sections, whereas a highly preferential premium is placed on the large city and industrial sections. The present system of rates could not, therefore, be more skilfully designed to encourage the people to desert the mines, the farms and the forests, and to promote migration to the already badly over-congested city and industrial sections. Unless the producers are made content and induced to remain at the sources of supply, the carriers will, of course, be unable to sell their transportation, resulting in failure after failure, and the only other alternative that will then be available will be for the government to take over the carriers and operate them upon some uniform plan such as the postoffice and parcel post departments.

"The true function of the railroad used to be that of assisting and developing the territory it served. This was the policy followed which built up great railway properties, because by the development of the natural resources and the prosperous communities which they assisted in establishing made their own prosperity possible. According to the interstate commerce act as amended 1920, and the formal pleadings of the carriers, a new policy has been adopted by which book cost values and 6 per cent returns thereon are the paramount considerations, and this notwithstanding that the paramountcy of the public interest and welfare cannot be violated without serious loss to the carriers and industrial enterprises as well as to their employes.

"If the jurisdiction of the states to regulate their own commerce is not upheld before the Interstate Commerce Commission or the United States Supreme Court the question must be carried before Congress and if necessary before the people for such constitutional amndment as will save to the people their dual form of government and their rights and liberties thereunder," the report said, referring to the intrastate rate situation. "There can be no compromise on this issue.

"The desire and the expectation of the state commissions was to proceed in conformity with the adjudicated rule of procedure laid down by the United States Supreme Court in the Minnesota Rate Case, 230 U. S. 352, for the purpose of ascertaining the just and reasonable rates to be established for the movement of state traffic. In the absence of anything other than the formal pleadings of the carriers before the state commissions and their refusal to co-operate in ascertaining the facts relating to state revenues, expenses, valuation and reasonable rates to the public in various commonwealths where the rates were already too high as a result of Railroad Administration Order No. 28, the conclusion was, and is, that the carriers take the position that they have been relieved from the jurisdiction of state authority; that they may, on the basis of the Interstate Commerce Commission decision in Ex Parte 74, apply in wholesale fashion the horizontal rates authorized to individuals, communities and states within the four defined groups fixed in Ex Parte 74, without regard to valuation, earnings and expenses creditable to each state, including obligations which have heretofore accrued; further, that if large shippers and chambers of commerce will co-operate, certain adjustments will be made in the aforesaid horizontal interstate rates under the blanket authority conferred by the Federal Commission when it appears that traffic cannot move under a literal application of Ex Parte 74; that under the Transportation Act the carriers shall for the future exercise their private managerial right of making such increased investments and furnishing such enlarged facilities and equipment as said private policy may dictate, and thereafter appeal for such further horizontal rate increase and adjustment authority as will enable them to further assess and tax the people of this country in proportion as population and prosperity increase, if, in fact, the latter can show a growth under such a policy.

"Here lies the danger of sacrificing state jurisdiction, for the reason that heretofore legislatures, courts and commissions have refused to authorize rates upon more than the reasonable value of the property beneficially useful and devoted to state commerce. This enables the states to exclude unreasonable and excessive investments, valuations and expenses. If the present conflict in jurisdiction raised by Ex Parte 74 is resolved in favor of the Federal authorities and the present group valuations become controlling, the authority of the carriers will in many cases be superior to that of the states, for the reason that the valuations taken for group purposes are so excessive that it will be impossible to fix 6 per cent rate returns thereon, and, therefore, the carriers may fix any rate under such standard without regard to its reasonableness and in defiance of the state authority.

"If the carriers, irrespective of excessive property valuations, obsolescence and excess in capacity in many states, are entitled to a 6 per cent return on an aggregate valuation of only 5.7 per cent less than accumulative book cost, is there any conceivable reason why the farming, the live stock raising, the mining, the merchandising and all other form of legitimate enterprise should not be granted the same guaranty? In other words, is there any reason or authority under our form of government by which the railroads should be made a special and preferred class? The guaranty clause in the amended commerce act should be eliminated at once and the function of fixing just and reasonable interstate rates and values, based upon the peculiar circumstances and conditions presented in different cases, should be placed within the discretion of the Interstate Commerce Commission, instead of following the present practice of so-called mandates from Congress. On the other hand, Congress must be called upon to protect the sovereignty of the states to the end that its commerce facilities shall not become a law unto themselves in violation of our constitutional dual form of government."

### Long and Short Haul Discrimination

The report discussed long-and-short-haul discrimination, in part, as follows:

"The Esch-Cummins act amended the fourth section so as to eliminate for the future the question of potential water competition upon which long-and-short-haul rates to different river

points within the nation have been justified for the past thirty years, although no through boat lines have existed and therefore no substantial tonnage has moved by water. Authority, however, remains to meet actual water competition subject only to the ambiguous provision that 'in exercising the authority conferred upon it in this proviso the Commission shall not permit the establishment of any charge to or from the more distant point that is not reasonably compensatory for the service performed.'

"A case predicated upon the findings of the Portland and San Francisco regional committees of the Railroad Administration in which they recommended a graduation of rates satisfactory to the intermountain people has been heard before the Interstate Commerce Commission and will, following argument before the Commission at Washington, within a few days, stand fully submitted. From the reasoning advanced by the examiner's tentative opinion, the foundation is apparently being laid for the re-establishment of lower rates at the long-haul Pacific coast points than those at the shorter haul intermountain points on the theory that water competition may again soon return. The opinion also suggests that the Commission is now charged with looking after the adequacy of railroad revenues, and the suggestion is carried that for this reason it may not be possible to grant to the intermountain section the gradation in rates based upon distance to which they are entitled.

"It is significant that water competition has always been as effective on eastbound traffic as it has been on westbound traffic upon which higher rates at intermountain points have been justified for the shorter hauls, but no attempt has ever been made to put in such a system of rating within the territory intermediate to Atlantic coast terminals, and we have often wondered why such territory has been exempt from this rate-making policy. In this connection, however, we have heard leading statesmen in Congress from the states of Ohio and Pennsylvania state most earnestly that they would never stand for the charging of a higher rate on eastbound transcontinental traffic to the shorter-haul points within their states than a lower rate for the longer haul to the Atlantic coast terminal points. If the principle is unworkable on eastbound transcontinental traffic, it must, of necessity, be indefensible on westbound transcontinental traffic.

"The aforesaid conditions are the result of long-established railroad, industrial and commercial practices, and under the practical working of the system, protection and prosperity are afforded to certain favored cities, which, because of their 'regional' location at great railway terminals and inland and ocean waterway ports, have been selected, to the exclusion of other cities on the Atlantic and Pacific coasts having equal waterway possibilities to act as commercial centers; in other words, to act as the clearing houses or jobbers for the railroads and the large eastern industrial trusts.

"In this connection practically no effort had, prior to the war, been made by San Francisco and other great Pacific and Gulf ports, to establish manufacturing enterprises and serve the great western and southern empires tributary thereto, and the rapidly growing South American and Asiatic trade. On the contrary, they have been content, largely, to act as clearing houses for the railroads and the large eastern manufacturers because, under the operation of long-and-short-haul rates, they have been given control of the jobbing business throughout vast areas of the shorter haul intermediate sections. In other words, by long-haul preferential rates and special back-haul distributing rates, they have been enabled to warehouse western and southern products, but of eastern manufacture, after railway hauls across the entire continent and back, averaging from 2,500 to 3,000 miles, and thereafter to job, or backhaul, them into the intermediate points of production throughout the great Pacific coast, intermountain and southern states.

"The practical effect of these artificial transportation conditions, created by the large industrial and railway interests made possible by this uneconomic and unjust policy sanctioned by the government, causes centralization of population and traffic and subsidizes and legalizes monopoly of trade and industry at said rate-favored water points by compelling the location of industrial enterprises thereat to the exclusion of their location at or near the points of supply; this in turn furnished an excuse for and, in fact, makes necessary the building and maintenance of large railway terminals at those preferentially rated centers. The building of such terminals adds enormously to the investment in railroads, and the cost of operation for terminal, storage and switching of traffic and equipment. Further, that expensive switching to private industrial tracks is furnished free of cost to the beneficiaries of the aforesaid preferential rates; that the return upon these large terminal investments and the cost of the free service furnished is included within and made a part of the line-haul rates, from which it follows that, without compensating advantage, a mileage pro rate of this burden is assessed against the already prejudicially rated short-haul intermediate states; that, therefore, these benefits and privileges, when added to the preferential line-haul rates accorded to these terminal points, nourishes and perpetuates said industrial monopoly in restraint of state development throughout the intermountain and southern states in proportion as the resources and energies of the various states and the people would otherwise justify; that the intermediate sections are compelled to contribute toward the maintenance of this indefensible monopoly by the payment of higher transportation rates, and, therefore, higher prices for practically all articles of consumption than would otherwise be necessary if there was a wider distribution of industrial enterprise and, consequently, a more economical distribution of traffic instead of the present wasteful congestion of railway traffic at large terminals, resulting in car shortages and a frightful slowing up of transportation and commerce during certain periods of practically every year; and that, because of the foresaid disabilities, the intermediate short-haul states lose from community upbuilding and taxation that proportion of the population and industrial property which is rightfully theirs, but which, under the present authorized governmental policy, must be located at said large terminals for the concentration, manufacture, and fabrication of the products from the resources of said intermediate states.

"It therefore follows that monopoly levies a heavy tax on the people of these states by requiring them to pay through the medium of heretofore unregulated, trust-fixed prices of commodities and said high and prejudicial freight rates, a sufficient tribute to enable it to enjoy exclusive terminal facilities and to dictate the location of industrial activities. Further, that our public transportation highways, under the plea of an adequate reward for the unregulated expenditures of private capital invested in costly and extravagant standards of track and equipment, and the alleged necessity of meeting water, market and rail competition in the past, have been used under governmental sanction to create the monopolistic conditions herein complained of and entirely too little attention has been given to state welfare and development. The paramount consideration has been the question of railway development and prosperity, and because of it the people of the far western and southern states have paid a heavy tribute for long and double hauls on those products which would bear such charges. These tributes are increasing and the consideration for the sovereignty and welfare of the various states is growing markedly less among the railway, the industrial and the large banking interests on Wall Street."

### Passenger Fares

Discussing the passenger fare situation, the report said:

"The trunk-line carriers have withdrawn all scrip books, round-trip and excursion fares since the order in Ex Parte 74 and are assessing 3.6 cent fares per mile throughout the country, except in certain intermountain states. Interstate fares amounting to 4.8 cents and 6 cents per mile are being assessed on the main lines, while 6 cents and 7.2 cent interstate fares are being enforced on the branch lines to and from points outside to points within Nevada, Arizona and New Mexico. Although complaint has been made and the case heard and submitted to the Interstate Commerce Commission for the establishment of reasonable rates, the aforesaid example shows the fallacy of granting the carriers horizontal rate increases without regard to the reasonableness to the public, and indicates that the carriers have little or no regard for the welfare of the people in these pioneer sections. The carriers plead sparcity of population throughout this portion of their system and allege that revenues are relatively small although practically all of the service rendered is that afforded by the starting and stopping of through trans-state trains. These states are in the development stage and, of course, cannot make a strong bid for new colonists on such terms as these. There is no precedent for such action throughout the period of development of the central and western prairie states. On the contrary, low passenger fares were always established for the purpose of aiding in settling up new territory. Oklahoma, for example, was settled and developed by Congress refusing to let the railroads assess more than a 3-cent fare, which was fixed on the basis of the rates in Kansas and Texas, although the latter states were well developed and afforded good revenues to the carriers, while the railroads, pioneering their way through Oklahoma, were unable to make any substantial revenue therein until after they had assisted in building up the state."

### Valuation Report

The report of the valuation committee was submitted by H. G. Taylor of Nebraska, chairman. Because of the large turnover of employes in the bureau of valuation of the Commission, Mr. Taylor said, it is impossible to estimate with any approach to exactness the date of the final completion of the valuation work.

Prior to November 6, 1919, the report showed, the Commission had served 55 tentative valuations, but no tentative valuation has been served since November 9, 1919. No final valuation has been reported by the Commission, the report said. The field engineering work is expected to be completed by June 1, 1921, the field land appraisal work by July 1, 1921, except in the eastern district, where it will require part of the year following. The field land appraisals will not include estimates of cost of condemnation and damages in excess of present value or present cost by the dates named, the report said. The accounting field

work in all districts will be completed by January 1, 1922, the committee was informed.

"The reason for the entire cessation of the service of tentative valuations, and of the determination of cases by the adoption of final valuations, is found in the Kansas City Southern litigation," the report said.

A review of the issues which arose in the Kansas City Southern case, in which the United States Supreme Court held the Commission had to report the "cost of condemnation and damages or of purchase in excess of such original cost or present value" of carriers' lands, was set forth in the report.

"It was this suit which interrupted the promulgation of valuations, tentative and final," the report said. "Such interruption did not occur immediately upon the institution of the suit. While the case was pending in the lower courts the Commission appears to have paid no attention to it, so far as the conduct of the Commission's work was concerned. After the argument of the case before the Supreme Court, however, no further valuations were promulgated.

"What influenced the Commission, in advance of the decision of the court, to suspend the promulgation of valuations is not known; but it was commonly remarked at the time of the argument before the Supreme Court that questions from the bench during the argument foreshadowed the opinion of the court, which was later handed down.

"The opinion necessarily invalidated every valuation theretofore served, and it will be necessary, if the law stands in its present form, to amend each valuation heretofore adopted by, including the Commission's estimate of the cost of condemnation and damages in excess of original cost or present value, and to serve such amended valuation. The amended valuation will then be subject to protest and hearing."

The effect of the decision in the Kansas City Southern case has been to cause an entire year to pass without the service of a single valuation, the report said.

"When the Commission has made the investigation which will be necessary, and has reported the estimate of 'present cost of condemnation and damages or of purchase in excess of present value' such estimate will either be wholly useless or worse than useless," the committee said. "If it is used to increase the value for rate purposes found by the Commission, it will, to the extent of such use, be destructive of rights of the public which existed before the valuation act was passed.

"But for the command of Congress which the Supreme Court has found in the act, it is indisputable that not only would it be unnecessary for the Commission to spend its time and the public money in making such an estimate, but that if the estimate were made and used to increase value it would be unlawful. Nothing in the court's decision in the Kansas City Southern case in any way modifies what was formerly said in the Minnesota Rate Cases opinion. The court determines merely that the Commission must obey the command of Congress to report the estimate which the act directs shall be made. That is decided and nothing more.

"The gross injustice to the public of using this estimate of purely hypothetical costs is patent without argument."

Amendment of the valuation section of the act to regulate commerce to relieve the Commission from reporting the present cost of condemnation, etc., was urged by the committee. Bills providing for such amendment are pending in Congress.

As to the question of final value for rate-making purposes, the committee stated that from the beginning of the valuation work the association had taken the position that the valuation act did not require the Commission to find a single sum as the value of a given railroad property. However, the committee pointed out, the transportation act now requires the Commission to value the property for rate-making purposes and that therefore it "is now beyond question the duty of the Commission to find, as in the Texas Midland case it said it would find, a final value." The committee said it understood that in the future the tentative valuations would state a final value.

Discussing the valuation found by the Commission in Ex Parte 74, the committee said it was not known how the Commission arrived at its figures and that there was no discussion of valuation principles in the report in that case. The Commission should not be criticized for its procedure in fixing the valuation in the advanced rate case, the committee said, but the hope was expressed that the findings as to value in that case would in no way affect the future findings of particular properties.

"With respect to the future progress of federal valuation work, we do not venture to make any prediction," the report concluded. "With indefatigable industry Director Prouty and his associates in the Bureau of Valuation are pressing forward their part of the work. The task in which they are engaged is prodigious. It has thus far been prosecuted, particularly since the opening of the German war, under great difficulties. Nevertheless, the work preliminary to the actual making of valuations is undoubtedly drawing measurably near to an end. As has been before stated, within a year or two all field work (aside from investigations necessary to an attempt to estimate the cost of condemnation and damages in excess of original cost or present value) will have been completed. The results of the field work within a year or two further ought to be put into the shape of completed engineering, land, and accounting reports.

"When this point is reached, however, we shall be still far from having a valuation of the railroads of the country. How many years it will require to prepare tentative valuations based upon these underlying reports, and to litigate the countless questions of law and fact that will be raised by carriers in their protests, nobobdy can predict.

"Our duty with respect to this work, however, does not appear doubtful. The carriers, without stint of money, and with the aid of the highest legal and technical talent, are endeavoring with unending persistence to secure a valuation made upon principles, which, if applied, will produce values so largely in excess not only of the actual investment in the properties valued, but in excess of the economic worth of the same, that earnings thereon cannot be made. If they succeed, then under the constitutional rules the power of regulatory authorities, both state and federal, to regulate the quantum of rates collected will have been destroyed.

"Federal valuation has reached a critical stage. The Interstate Commerce Commission is now to determine upon what principles it will proceed to find value from the data gathered by the bureau of valuation. Carriers' claims for 'going value,' and 'other values and elements of value,' and for hypothetical 'present cost of condemnation and damages in excess of original cost or present value,' their claims to capitalize against the public, immense additions and betterments built out of earnings, which are, in fact, depreciation reserves, and to capitalize also the rights of way held under public grants, and even the franchises under which they operate, and the natural resources and industrial activity of the communities which they serve—upon the basis of increased earning capacity—these and many similar claims, involving amounts which stagger the imagination, are to be passed upon by the federal commission as they are presented from time to time in valuation cases which arise for the final decision of the Commission.

"The years immediately before us will determine whether federal valuation will prove to be a public benefit, as an aid toward a just solution of our transportation problem, or whether it is in fact impossible to carry through in the public interest any work which brings into play for the promotion of their own interests such great financial forces as are represented by, and allied with, the carriers.

"At such a time whatever the state commissions individually and collectively can do to insure a determination that is right, ought to be done, and we doubt not will be done."

The report was received for printing.

### Grade Crossings and Trespassing

William M. Smith, of Michigan, chairman of the committee on grade crossings and trespassing on railroads, submitted that committee's report, which was received for printing. The committee recommended enactment of laws providing for the elimination of the more dangerous grade crossings by the separation of grades. The committee said it realized that railroads had not been ordered to eliminate dangerous crossings in the war period, but that "now that the railroads of the United States have been turned back to their owners and have been given by the Interstate Commerce Commission and by the various state railroad and public utility commissions rates, both passenger and freight, sufficient to enable them to properly function, the time has, in our judgment, arrived when all the state commissions should again take up the plan approved in 1916 and carry it into execution in all the states.

"We would, however, in this connection make one additional recommendation and that is—that the state commissions secure in all the states the passage of a law requiring every automobile crossing a railroad crossing which is not protected by gates or a flagman to come to a full stop before crossing the railroad track. This recommendation may appear like going a good ways. However, a number of states have passed laws requiring automobiles to slow down to a very slow rate of speed before crossing railroad tracks, and we understand that the states of Tennessee, Washington, and possibly some other states, have passed laws requiring the drivers of automobiles to come to a full stop before crossing railroad tracks.

"At the present time automobiles are being constantly driven throughout the entire United States. Great good will come from uniform regulations and warnings, but all the regulations and warnings in the world will not prevent all accidents. If all drivers of automobiles are required to bring their machines to a full stop before crossing unprotected crossings, thousands of lives will, in our judgment, be saved each year."

O. O. Calderhead, statistician of the Washington commission, submitted the report of the committee on statistics and accounts of public utility companies. The committee submitted copies of proposed uniform systems of accounts for electric and gas companies, and these will be considered by each of the state commissions before the next convention.

The committee on public utility reports, of which John S. Allen, of Wisconsin, is chairman, submitted a statement prepared by Mr. Allen, discussing the increased return "which has

been so generally recognized by commissions during the present period of increased costs of material and labor."

"It has been argued frequently before many of the commissions represented here that the utility companies should be authorized a larger return on capital already invested, the financing of which had been done on rates much lower than those prevailing at present and for long terms of years," the statement continued.

"We are of the opinion that it is the general tendency to make liberal allowances for the actual increase in the cost of money, but to refrain from giving a larger return unless a real necessity for it can be shown. The cost of money is just as definite as the cost of various kinds of merchandise used, or as the cost of labor. Regulating commissions are under the same obligation to make suitable allowances for increased cost of money as for increased cost of coal, wire, rails or labor.

"A few years ago public utility operators, regulating commissions and others spent a great deal of time discussing the various forms of utility rates with a view toward finding that one which should most nearly serve the purpose of making the charges to the customer fair, both to him and to the utility. In recent years this subject has had much less attention, and the question of the amount of the return has become of far greater importance. Formerly many individuals and some commissions were of the opinion that a certain kind of a rate should be used and felt that much would be gained by establishing standard forms of rates. It seems to be clear that in many cases the virtues of these various kinds of rates have not been borne out in practice. There can be little doubt but that those who were formerly the most ardent advocates of a particular rate have become much more tolerant and are now willing to concede that no one has yet proposed a form of rate which is entitled to universal acceptance."

Mr. Taylor of the valuation committee submitted a statement in regard to a proposal made by Commissioner Haynes of Indiana that the association and the American Telephone and Telegraph Company enter into a joint study of the 4 1-2 per cent licensee revenue charge made by the American Telephone and Telegraph Company. The matter was taken up unofficially with the company. Mr. Taylor reported, with the result that the company replied with a letter which Mr. Taylor said could be "interpreted only as a rejection of the proposal."

The association adopted a resolution offered by the executive committee relative to the maintenance of the Washington office of the association and the financing thereof. The resolution carried an expression of commendation for the work of Mr. Benton, the general solicitor, and a recommendation for the employment of such assistants as may be needed.

Late on the afternoon of November 11, "Armistice Day," the association held a special memorial service which was participated in by the Commission's choral society, directed by Commissioner Aitchison.

## NEW YORK INTRASTATE RATES

*The Traffic World Washington Bureau*

A new turn to the intrastate rate situation in the state of New York has developed with the handing down of an opinion by the Appellate Division of the Supreme Court of the state of New York in the case of the Public Service Commission of New York, Second District, against the New York Central Railroad Company, involving the application of a two-cent passenger fare between Albany and Buffalo, New York.

The Appellate Division of the New York Supreme Court, in its opinion, which was handed down November 10, overruled Justice Hinman of the New York Supreme Court, who held against the Public Service Commission on a petition seeking enforcement of the 2-cent fare between Albany and Buffalo. (Justice Hinman's opinion was printed in The Traffic World, August 14, p. 291, along with the opinion of the United States Circuit Court of Appeals, which involved the same question.)

The effect of the opinion of the Appellate Division of the New York Supreme Court is that Section 208 (a) of the transportation act of 1920 suspended state rates until September 1, 1920, only, and that the state rates became automatically effective after that date. The duty, therefore, the Court said, devolved upon the Public Service Commission to compel obedience to the law. There was a dissenting opinion by the presiding justice, John M. Kellogg, concurred in by Associate Justice Henry T. Kellogg.

Copies of the opinion and dissenting opinion were sent to members of the state commissions, November 16, by John E. Benton, general solicitor of the National Association of Railway and Utilities Commissioners.

"The opinion of the court is also indicated to be that the federal Congress has no power, even under the war power of the Constitution, to make intrastate rates for carriers not operated as agencies of the federal government," said Mr. Benton in a bulletin to the state commissioners.

"It is understood that an appeal will be taken by the New York Central to the Court of Appeals of New York. In that event an opinion from that court may be expected within two or three months."

The majority opinion, by Justice Woodward of the Appellate Division, follows:

"The Public Service Commission, Second District (hereafter referred to as the Commission), instituted a proceeding under the provisions of section 57 of the Public Service Commissions Law, the object of which was to compel the New York Central Railroad Company, the respondent, to obey the provision of an order issued by the commission directing the respondent to restore the passenger rates, prescribed by law on and after the first day of September, 1920. This order was issued on the 15th day of June, 1920, and, as a defense, the respondent asserted the provisions of section 208-a of the Federal Transportation Act of 1920, and the learned court at special term has dismissed the proceeding on the merits, holding in effect that the provisions of the federal statute operate to fix the rate at three cents per mile until the legislature of this state has, under the supposed authority of the federal statute, taken affirmative action changing such rate. The question presented for review here is the proper construction of the statute, and, if the construction put upon it by the respondent and the court below is sustained, whether such statute is warranted under the provisions of the Tenth Amendment of the Constitution of the United States.

"Adopting the respondent's statement of facts, 'various connecting railroads between Albany and Buffalo were consolidated into the New York Central Railroad Company, pursuant to chapter 76 of the laws of B53, section 7, whereof limited way passenger fares on the road of the consolidated company to a rate not exceeding two cents per mile. November 1, 1869, the New York Central Railroad Company was consolidated into and became a new corporation under the name of the New York Central & Hudson River Railroad Company. December 23, 1914, the consolidation of the New York Central & Hudson River Railroad Company with other railroad companies resulted in the organization of respondent under the laws of, and operating within the states of New York, Pennsylvania, Ohio, Indiana, Illinois and Michigan, with leased lines operated in the states of New Jersey and Massachusetts and branches extending into Canada.

"'The two-cent rate prescribed by section 7 of chapter 76 of the laws of 1853, in time codified in sub. 5 of section 57 of the Railroad Law, had remained continuously in effect when, on December 28, 1917, the President of the United States, pursuant to Act of Congress, approved August 29, 1916, by proclamation dated December 26, 1917, assumed possession, use, occupation and control of respondent's railroad system.'

"Under the provisions of the Federal Control Act it was provided that the railroads so taken over by the general government should continue in that relation 'during the period of the war and for a reasonable time thereafter, which shall not exceed one year and nine months next following the date of the proclamation by the President of the exchange of ratifications of the treaty of peace,' and the President was authorized to relinquish such control at any time in his discretion. By General Order 28, dated May 25, 1918, the Director-General of Railroads authorized the collection of three-cent fares for both interstate and intra-state passenger traffic, and this rate continued to be authorized and collected up to and including the 29th day of February, 1920, the day following the approval of the Federal Transportation Act of 1920, which provided, in its section 208-a, that 'all rates, fares and charges, and all classifications, regulations and practices, in any wise changing, affecting or determining, any part or the aggregate of any rates, fares or charges, or the value of the service rendered which on February 29, 1920, are in effect on the lines of carriers subject to the Interstate Commerce Act, shall continue in force and effect until thereafter changed by state or federal authority, respectively, or pursuant to authority of law; but prior to September 1, 1920, no such rate, fare or charge shall be reduced, and no such classification, regulation or practice shall be changed in such manner as to reduce any such rate, fare or charge, unless such reduction or charge is approved by the Commission,' and the court below has held that this prevents the operation of the laws of the state of New York without further action on the part of the legislature. We are now to determine whether this is the true construction of the provision quoted.

"There is a canon of construction which cogently argues that a rational, sensible and practical construction of a constitution, statute or contract, should be preferred to one which is unreasonable, absurd or impracticable (McPhee & McGinnity Company vs. Union Pacific Railroad Company, 158 Fed. Rep. 5, 17), and it is always proper to assume that the legislative body has acted with a knowledge of existing laws and constitutions, and that it has intended to produce a harmonious and workable system, without doing violence to constitutional principles. 'The Constitution itself,' says Cooley in his Principles of Constitutional Law, 'never yields to treaty or enactment; it neither changes with time, nor does it in theory bend to the force of circumstances. It may be amended according to its own permission; but while it stands it is a law for rulers and people, equally in war and in peace, and covers with the shield of its

protection all classes of men, at all times and under all circumstances,' and it is proper, therefore, that we consider the position in which the United States government stood in relation to the respondent's railroad and to the state of New York in the enactment of the provision here under consideration.

"There is no doubt that 'the government within the Constitution has all the powers granted to it which are necessary to preserve its existence' (Ex Parte Milligan, 4 Wallace, 2, 120), and the United States is sovereign in respect to those matters which have been delegated to it. 'In American constitutional law,' says Cooley, 'a peculiar system is established; the powers of sovereignty being classified, and some of them apportioned to the government of the United States for its exercise, while others are left to the states. Under this apportionment the nation is possessed of supreme, absolute and uncontrollable power in respect to certain subjects throughout all the states, while the states have the like unqualified power, within their respective limits, in respect to other subjects.' (License Case, 5 How. 504, 588; Ableman vs. Booth, 21 How. 506, 516; United States vs. Cruickshanks, 92 U. S. 542; Barber vs. Connolly, 113 U. S. 27; Mulger vs. Kansas, 123 U. S. 623; Kidd vs. Pearson, 128 U. S. 1; Atlantic Coast Line vs. Goldboro, 232 U. S. 548, 558.) In other words, in the exercise of the sovereign powers of the United States there are no state lines (Lake Shore & Michigan Southern Railway vs. Ohio, 173 U. S. 285, 305; Oklahoma vs. Kansas Natural Gas Co., 221 U. S. 229, 255). It is the same as though there were one great state with a single legislative power, as in Great Britain. But like all other powers granted to Congress by the Constitution, the power to regulate commerce is subject to all the limitations imposed by such instrument, including the Fifth and Tenth Amendments. Congress has supreme control over the regulation of interstate and foreign commerce, and with the Indian tribes, but if, in the exercise of that supreme control, it deems it necessary to take private property then it must proceed subject to the limitations imposed by the Fifth Amendment, and can take only on payment of just compensation. The power to regulate commerce is not given in any broader terms than that to establish postoffices and post roads; but if Congress wishes to take private property upon which to build a postoffice it must either agree upon the price with the owner or in condemnation pay just compensation therefor. And if that property be improved under authority of a charter granted by the state, with a franchise to take tolls for the use of the improvement, in order to determine the just compensation such franchise must be taken into consideration. (Monongahelia Navigation Co. vs. United States, 148 U. S. 312, 326, 337.) So, in the exercise of the war power the Congress has plenary power, but it must be used subject to the limitations of the Constitution; it can take the property of individuals and corporations only upon the payment of just compensation, and as the states have full power to regulate within their limits matters of internal policy, including in that general designation whatever will promote the peace, comfort, convenience and prosperity of their people, embracing the construction of roads, canals and bridges and the establishment of ferries (Lake Shore & Michigan Southern Ry. vs. Ohio, 173 U. S., 285, 294), it must follow that the war power does not include the power to legislate in reference to any of these matters which belong of right to the states; for whatever is not conferred is withheld and belongs to the several states or to the people thereof. (Calder vs. Bull, 3 Dall. 386; Gibbons vs. Ogden, 9 Wheat, 1, 187; Briscoe vs. Bank of Kentucky, 11 Peters, 257; Slaughter House Cases, 16 Wall. 36; United States vs. Cruickshanks, 92 U. S. 542, 550.)

"If we are right in these several propositions, the war power does not in its exercise increase the sovereign powers of the United States beyond the ennumerated powers; it does not authorize an invasion of the field of state legislation. Though limited in its powers it is supreme in the matters confided to it, and its laws, when made in pursuance of the constitution, form the supreme law of the land, 'anything in the constitution or laws of any state to the contrary notwithstanding.' (Second Employers' Liability Cases, 223 U. S. 1, 54.) The law which authorized the President of the United States to take over the railroads of the country was clearly an exercise of the war power; the right to take the property of individuals and corporations upon the payment of just compensation for the purposes of the war, and as the taking did not contemplate their destruction but rather a usufructuary right, to terminate with the ending of the war, there was no occasion for any interference with the legislative power of the state. The government of the United States came into possession of the property under a paramount power—a power superior to that of the state and the owners combined. It had within itself, for the purposes of the war, the combined rights of both in this public utility. It had the right and the power to legislate in respect to this usufructuary use of the property; to determine the uses to which it should be put and the amount of the compensation which should be paid for such services as were rendered to the public as an incident to the purposes for which it was taken. The New York Central Railroad Company, as a corporate entity created and endowed by the state of New York, owed the duty of service to the state from which these privileges proceeded (Pennsylvania Gas Co. vs. Public Service Commission, 225 N. Y. 397, 409), but when the United States government, in the exercise of its sovereign powers, took possession of the property and the franchises the corporation was absolved from the discharge of these duties, and it had no control over the rates or the service. In short, the New York Central Railroad, during the period of the war, was not a commercial railroad exercising its franchises, but a mere instrumentality of the United States in carrying on the war, in the same sense that a steamship or a man-of-war, carrying troops or performing other service, would be an instrumentality for prosecuting the hostilities. The United States has no power under the Constitution to construct and operate a railroad in the state of New York for the purpose of discharging the obligations of a common carrier within the confines of the state; it could only do this under its war power, and for war purposes, though as an incident it could undoubtedly carry goods and passengers, but its powers in the premises are due wholly to the war power and not to any authority under the Constitution to become a common carrier. These powers ended with the necessity which brought them into operation; the rates of fare which the Director-General established as the condition upon which the United States would transport persons in connection with the war activities had no relation whatever to the New York Central Railroad Company as a New York public service corporation; they were the rates common to the railroad system generally, without any reference to the duties and obligations of these public highways to the states and the people as common carriers.

"This was the true environment, in which the legislation here under consideration was enacted. The necessity which justified the taking over of the railroads as war instrumentalities was at an end; the purpose was to restore them to their owners. The question of just compensation was involved in the method of restoring as well as in taking; the old individual systems, with their affiliations, had been broken up, their organizations dissipated, their traffic diverted. To simply turn them back without regulations or provisions for a continuation of revenues during the period of reorganization would be an act of great injustice; and if we read section 208-a of the Federal Transportation Act of 1920 in the light of these conditions, and with a knowledge that the war power did not involve any power to deal with the corporate rights and duties owing to the states of their creation, we shall have little difficulty in arriving at the conclusion that it was not the purpose of Congress to change the corporate rights and duties of the New York Central Railroad Company in so far as it is related to the carrying of passengers within the limits of the state of New York, apart from interstate traffic. The United States government clearly had no power to create the New York Central Railroad Company, nor to endow it with the right of eminent domain. 'The franchises of a railroad corporation,' says Nellis on Street Surface Railroads (p. 55), 'are rights or privileges which are essential to the operation of the corporation, and without which its road and works would be of little value; such as the franchises to run cars, to take tolls, to appropriate earth and gravel for the bed of its road, or water for its engines, and the like. They are positive rights or privileges, without the possession of which the road of the company could not be successfully worked,' and these franchises proceed mediately or immediately from the state. (New Orleans Gas Co. vs. Louisiana Light Co., 115 U. S. 650, 659, and authorities there cited; City of New York vs. Bryan, 196 N. Y., 158, 165.) It is an elementary definition of a franchise that it is a grant from the sovereign power (City of New York vs. Bryan, supra), and the sovereign power to create corporations for intrastate purposes at least has not been delegated to the national government, and as the war power begins and ends with the necessities created by war, and does not extend to the creation or regulation of common carriers, it must follow that the Congress could not be deemed to have intended to go beyond its constitutional powers in the absence of controlling language to that effect. Congress has no power to amend state legislation; its enactments merely supersede or control those of the states where they are in conflict (Second Employers' Liability Cases, 223 U. S. 1, 54), and legislation enacted under the war power only goes to the necessities of the war, and not to the internal affairs of the several states in times of peace. Section 208-a of the Federal Transportation Act does not, by any fair construction of its language, attempt to deal with intrastate commerce, or with the rates of fare within the limits of individual states, except for a limited period within the actual duration of the technical war. Its language is that 'all rates, fares and charges, and all classifications, regulations and practices, in any wise changing, affecting, or determining, any part or the aggregate of rates, fares or charges, or the value of services rendered which on February 29, 1920, are in effect on the lines of carriers subject to the interstate commerce act, shall continue in force and effect until thereafter changed by state or federal authority, respectively, or pursuant to authority of law,' etc. What do we understand by 'pursuant to authority of law'? Law, as we understand it, is a rule of civil conduct prescribed by the lawmaking power in

the state' (18 Am. & Eng. Ency. of Law, 589), and it must be an existing rule of conduct; a rule prescribed. When the Congress declared that the then existing rates should 'continue in force and effect' until thereafter changed 'pursuant to authority of law,' it could not have intended a law to be thereafter enacted, for it had already provided for a change 'by state or federal authority,' which, we assume, contemplated legislation where the law did not already provide the necessary rule. In the case of the New York Central Railroad Company the rate of two cents per mile was a charter provision; it was the condition which the corporation accepted along with its franchises. It is as much a part of its being as any other provision in its charter which must be accepted or rejected in toto. If accepted it must be taken as offered, and the company has no right to accept in part and reject in part (Paige vs. Schenectady Ry. Co., 178 N. Y., 102, 114). The acceptance of the charter by the corporation constituted a contract with the state of New York, and any action which relieves the grantees of the burdens it imposes is in violation of the contract with the state, and is void as against public policy (Paige vs. Schenectady Ry Co., supra, p. 115, and authorities there cited). The federal transportation act of 1920 repealed, in effect, the act under which the railroads were taken over by the United States, or at least released the respondent from any operation of that law, and there can be no reasonable doubt that, as the chartered rights of the New York Central Railroad came into full operation with the return of the railroad property to its owners, the duties and obligations, constituting a part of the charter contract, followed the rights and are now controlling. The federal transportation law of 1920 does not purport to sever the relation between the charter provileges and the condition upon which those rights were granted; no such power was delegated to Congress and no such power has been attempted to be exercised. The act of Congress simply suspended the operation of existing state law up to the first day of September, 1920, and then, by operation of law—by the force of the contract with the state of New York—the rates established in 1853 became operative, and the duty devolved upon the Public Service Commission of the Second District to compel obedience to the law.

"The order appealed from should be reversed, with costs, and the Commission should have judgment in accord with the petition, with costs."

The dissenting opinion by Justice John M. Kellogg follows:

"The taking over of the railroads by the government during the war was a proper war measure and in effect superseded and annulled, for the time being at least, the state laws with respect to their operation. There can be no serious dispute but that the transportation act, under which the railroads were returned to the owners, contemplated that the rates which the government had established upon the roads should not be reduced prior to September 21, 1920, by any state authority and that existing rates should continue until they were thereafter changed by state or federal authority, respectively, or pursuant to authority of law. Evidently the words 'pursuant to authority of law' were intended to be qualified by the preceding word 'thereafter.' The public records, the terms of the act itself and the situation existing and the general understanding in and outside of Congress, make it clear that such was the legislative intent. The transportation act recognized that by taking over and operating the roads the government had in effect demoralized them and their service and rendered it impracticable for their owners to operate them unless they had some government relief or assistance, and this act was intended to have that effect. The act, however, permitted the states and the local boards to decrease the rates thereafter, but apparently upon the ground that they were excessive. Assuming, therefore, that Congress intended that rates should not be changed by any law or regulation in the state unless the law or regulation was thereafter made, the case turns upon the question of the legality of the transportation act.

"The war measure by which the government took over the railroads was not complete by the taking; it involved the operation and the return, both of which were contemplated by and were a necessary part of it. 'Assuming that the implied power to enact such a prohibition must depend not upon the existence of a technical state of war, terminable only with the ratification of a treaty of peace or a proclamation of peace (United States vs. Anderson, 9 Wall, 56, 70; The Protector, 12 Wall, 700, 702; Hijo vs. United States, 194 U. S., 315, 323), but upon some actual emergency or necessity arising out of the war or incident to it, still, as was said in Stewart vs. Kahn, II Wall, 493, 507, "The power is not limited to victories in the field and the dispersion of the (insurgent) forces. It carries with it inherently the power to guard against the immediate renewal of the conflict, and to remedy the evils which have arisen from its rise and progress"' (Hamilton vs. Kentucky Distilleries Co., 251 U. S., 146, 161). See Jacob Ruppert vs. Coffey, 251 U. S., 264, 282.

"Immediately upon taking over the railroads the government, in effect, operated the entire systems of railways in the country as one system, taking from certain lines the business which had been built up by them in the previous years and diverting it to other lines as the interests of the government required. It had greatly increased the wages of railway employes and, as a consequence of the war, all expenses of railroads as well as of others were nearly doubled. It was obvious, and the legislative records show that it was deemed disastrous to the roads and injurious to the public and the general good if they were to be returned to the owners without some relief from the conditions which the government had caused by its control and management, that unless relief was granted bankruptcy of many and perhaps of most of the roads would have followed.

"Congress evidently considered that the rates in the various states fixed by the Commission and the statutes before government control were then of doubtful validity because of the changed condition. It evidently considered that a rate which was just before the war was unjust and unremunerative at the time the transportation law was passed. It had good reason to conclude that a return of the roads without some governmental protection meant chaos, and that there were no existing rates outside of these fixed under government control. It evidently had in view the rule laid down in Municipal Gas Co. vs. Public Service Commission (225 N. Y., 89-96), from which we quote: 'Into every statute of this kind we are to read, therefore, an implied condition. The condition is that the rates shall remain in force at such times and at such only as their enforcement will not work denial of the right to a fair return. When the return falls below that level, the regulation is suspended. When the level is again attained, the duty of obedience revives. There would be no obscurity about this if the condition were expressed. It is no less binding because it is implied. The constitution is the supreme law; and statutes are written and enforced in submission to its commands.'

"The transportation act did not entirely return the roads to the owners and release the grip which the federal government had upon them as a war measure. As we have seen, it provided, in effect, that the existing rates should continue until thereafter changed by it or the local authorities. It had a direct interest in further control. It warranted for six months the net earnings of all roads so desiring, reserving to itself the surplus, if any. It retained supervision over the securities to be issued, and promised, in effect, financial assistance for the period of two years. By its terms, if upon the rates established by, or to be established under it, a carrier received a net railway operating income exceeding six per cent upon the value of the property used in the service, the excess of such income was controlled by the government. Evidently the rate of wages fixed by the Federal Railroad Administration cannot be changed by the companies at will, but by the terms of this law are intended to be controlled by the federal government. If the New York Central Railroad becomes bankrupt, it not only interferes with intrastate business of the road but is also destructive of its interstate business. The same is true of every road. The provisions of this act were evidently intended to prevent bankruptcy of the various roads and to retain them for the purpose of interstate commerce and for carrying the mails and general public use. If the government substantially takes the control of wages into its hands, it is not unreasonable for it to take the control of rates, and by the act in question it has substantially done both. By the provisions under which the railroads were taken by the government, its good faith was pledged to maintain the conditions of the roads and to return them to their owners in their integrity, unimpaired by the government use. As we have seen, the act of taking over the railroads as a war measure continues until they are returned. They are returned in a qualified sense and in a sense the federal government keeps control of them. The extraordinary war powers and duties of the federal government are not met until the evils arising from its forcible seizure and use have been remedied. They are returned only when they come back to their normal condition as going concerns and able to go. A thriving manufacturing plant, taken from an owner, is not restored to him by delivering to him its ruins. The legislation in question, so far as possible, has attempted to return the properties in such a way that the owners may use them and the people benefit by them. The federal government, which has a clear right to control interstate commerce, is a judge, in a way, of what acts are necessary for such control, and it may prevent the states from destroying the instruments by which interstate commerce is to be carried on. It may prevent the establishment of rates prejudicial to or destructive of interstate commerce (Houston & Texas Ry. vs. United States, 234 U. S., 342, 351-352). As a part of and to complete necessary war legislation and in the interest of interstate commerce I am satisfied the act is valid. I therefore favor affirmance."

## E., I. & T. H. PETITION

The Evansville, Indianapolis & Terre Haute Railway Company has filed a petition with the Commission asking for a certificate of public convenience and necessity, authorizing it to acquire and operate the railroad formerly known as the Evansville & Indianapolis Railroad, extending from Evansville to Terre Haute, Ind. The applicant acquired the road June 16, 1920.

## RECONSIGNMENT TARIFF PROTESTS

*The Traffic World Washington Bureau*

At the time this was written it was believed that the informal hearing to be had before the suspension board of the Commission on November 23, to discuss the protests that have been received against reconsignment and diversion tariffs, would be the largest the Commission has had on the suspension phase of its work for a long time. Announcement that such a hearing would be had was made on November 15. So many protests had been received at the time that that announcement was made that the matter had already assumed the proportions of a first class case.

The dominant note in practically each of the protests is that there has been such a recession in business that nothing should be done now that would have the effect of causing any farther diminution, especially in the volume of food stuffs. Many of the protests came from fruit and vegetable growers in California and Florida. In a general way they asserted that the penalties and limitations the carriers proposed putting on reconsignment would make it impossible for shippers to forward their goods in such a way as to assure a constant stream toward the markets.

Through all the protests runs the suggestion that restrictions such as have been proposed, in supposed compliance with the Commission's decision in the Reconsignment case, will re-act disastrously on both shippers and carriers, not to mention the consuming public.

A typical protest and argument in support thereof, it is believed, is that of the San Francisco Chamber of Commerce, through Seth Mann, its attorney, and manager of its traffic bureau, in behalf of the Wholesale Potato Dealers' Association. The foundation for his argument he found in the big increase in the production of potatoes in California from 1909 to 1919. The increase was from 6,006,000 bushels to 11,352,000. In support of the protest, Mr. Mann said:

"This enormous increase in production has been largely due to the reclamation of large areas of Sacramento River and San Joaquin River delta land, much of which is suitable only for potato and onion growing. The potato and onion business in California has gradually developed under the plan of putting the potatoes and onions into the carriers' hands, rolling the stock unsold and finding the market when the goods were near destination. In this way California potatoes and onions have become competitive with the products grown nearer to consuming centers, and the various elements that would otherwise handicap California and Pacific Coast states, such as distance with its attendant delay in delivery, deterioration in transit, possible change in market, and the like, have been overcome, and the buyer now buys California potatoes and onions with the same facility he would buy from any other locality. In other words, under the regime of unrestricted diversions and free backhaul, the risk of transportation, including delay, deterioration, decline in market, were all borne by the shipper and the California farmers received an increased demand, which warranted the enlarging of his area planted to potatoes and onions, and the carriers in turn benefited by the largely increased tonnage.

"California potatoes and onions are seasonable and are not suitable for indefinite or long storage. This is due to the quality of the potato itself, and also to the climatic conditions existing in this state. As a result of these conditions, a large part of the potatoes and onions grown in California and other Pacific Coast states must be marketed practically at the time of harvest, and in order to market at the proper time, the broadest distribution must be maintained. If the diversion, reconsignment and backhaul privileges are changed in the manner proposed by the carriers, this very necessary broad distribution of California potatoes and onions cannot be maintained.

"No matter how carefully the distribution of perishables is planned, there are always a certain percentage of cars that give trouble. These cars must be given special consideration. On a certain percentage of these trouble cars the shipper will be at the mercy of the buyer, because of the knowledge on the buyer's part that no further diversions are possible, and in these instances the shipper will be called upon to sacrifice the goods, with consequent financial loss. The financial loss to the shipper on these cars that give trouble, either due to the quality or market conditions or the advantage that the buyer possesses in the knowledge of the high cost of reconsigning the car at the local rate, will be so great as to overcome any possible profit on an entire season's movement.

"Whenever there is a scarcity of refrigerator cars, Pacific Coast potato and onion shippers have been refused such cars and compelled to use box cars, thus increasing the number of trouble cars on long distance shipments and making unlimited diversions a still more imperative necessity.

"The shippers see clearly that, with the diversion rules established as proposed, their losses on the small percentage of trouble cars will be so great as to discourage them and remove the incentive of buying California, Oregon, Washington, Idaho and Nevada potatoes and onions from the farmer, paying him cash for them and shipping them to distant markets unsold. It is also quite apparent to the shipper that unless they perform their function in the future of placing the Pacific Coast potatoes within ready access of consuming markets, these potatoes are not going to move into the consuming markets. As a consequence, potatoes will stay in the Pacific Coast states, and the farmers will quickly feel the lack of demand. An abandonment of potato and onion areas will result, with the corresponding reduction, in the production of food supplies.

"Simultaneous with a curtailment in the total production due to the handicap placed upon the Pacific Coast states, the total quantity of potatoes and onions in the United States will be lessened for a number of years to come, which means less potatoes and higher prices.

"The limiting of diversion, reconsignment and backhaul privileges on potatoes and onions is more pertinent to California, Oregon, Washington, Idaho and Nevada dealers and producers than to dealers and producers in any other part of the United States, because these western states are further away from the large consuming markets than any other producing locality. This has always been recognized by carriers, and they have accordingly established the blanket eastbound structure, which rates have included cost of unlimited diversions. With the two rate advances which have greatly increased the difference between Pacific Coast rates and rates from other producing localities in the Southwest, unlimited diversion and backhaul privileges are more imperative for the future of two of the principal agriculture crops of the coast states, the major portion of which must be marketed in other states. It has never been possible and will never be possible in the future for the product of California, Oregon, Washington, Idaho and Nevada to be marketed in competitive consuming markets unless some one other than the farmer and the ultimate buyer assumes the financial risk involved.

"With the diversion, reconsignment and backhaul privileges limited, there will be confusion in the potato and onion market, and inequalities will arise in the consuming markets. In the past, distribution has been equalized and a steady flow has been maintained by virtue of the free and unlimited diversion and reconsignment privileges. As a result of their removel we will have potatoes and onions selling in one town below cost, and in another place at three or four times their value, which is in direct opposition to the necessary policy of stabilizing prices. The removal of the diversion, reconsignment and backhaul privileges makes the distribution of potatoes and onions a wild-cat proposition, with every attendant loss and at times large and unreasonable profit. Furthermore, with an uneven distribution of potatoes and onions, there will be an over-stocking at certain points which will mean detention of equipment, undue length of storage and consequent deterioration of products.

"As heretofore stated, we realize that there has been some abuse of the diversion and reconsignment privileges, and accordingly we propose the following rules in place of those named in the tariffs herein involved:

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|---|---|
| First change en route or at first billed destination.......... | Free |
| Second change en route or at destination.................. | $2.00 |
| Second change en route or at destination................. | 5.00 |

And for each additional change an additional $5.00.

Free diversion should be allowed at first billed destination because field men must use designated points for billing to get car immediately in motion and their principals cannot be advised till next morning and must find favorable market, which cannot always be accomplished prior to arrival at first billed point. Furthermore, potatoes and onions frequently must be inspected en route, in order that principal may determine proper market for which suitable; and again, growers have to bill cars to inspection points before having a buyer, and there are many other conditions making one free diversion at first destination absolutely imperative.

"We are absolutely sure that a reasonable charge upon diversions will correct the abuse of the diversion privilege and restrict its use only to those cases where it becomes absolutely necessary and imperative. We believe that a charge for diversion, as proposed, will keep the average number of diversions to within those as now proposed by the carriers, to-wit, three; and in the majority of cases the carriers will not be called upon to perform any greater service than they now proposed. Under the rules we propose, the shipper will be given the right to use a greater number of diversions in cases where some are absolutely necessary, and the buyer will be deprived of the advantage of the knowledge that the shipper is at his mercy due to the fact that where diversion privilege has been exhausted the shipper, in order to reach another market, must pay the combination of locals.

"In conclusion, the San Francisco Chamber of Commerce on behalf of the California Wholesale Potato Dealers' Association, desires to call attention to the fact that all of the evidence gathered at the various hearings in connection with Fifteenth Section Applications 5318 and 5566, filed by Agent E. Morris, and consolidated under formal docket No. 10,173, (58 I. C. C. 568), was obtained during the year 1918 while the world war was still con-

tinuing. Conditions existing at that time have changed to peace time basis, and two increases in freight rates having since been made, we contend the decision rendered under formal docket No. 10,173 on August 5th, 1920, should be modified to agree with present changed conditions. A new hearing will develop an entirely different attitude on the part of the general public, and the facts as presented to the Commission at the original hearings will be greatly modified.

## COMMISSION'S COAL REPORT

*The Traffic World Washington Bureau*

The Commission, on November 12, sent to the Senate its answers to a resolution asking for figures about soft coal production; shipment to New England; for export and foreign bunkering; the effect of foreign demand on the prices which American railroads had to pay for fuel; from what ports exports were made; what percentage of coal dumped at the tidewater ports in March and April moved coastwise; what would be the probable production in Pennsylvania, Maryland, Virginia and West Virginia and what percentage of the coal mined in those states would be shipped to tidewater; to what extent the eastern section of the country depends on shipments of bituminous coal by water; and, finally, what is the tonnage shipped in normal times to supply the necessary requirements of the eastern coal section.

This resolution was inspired by the belief that the coal operators of what the resolution called the Pennsylvania-West Virginia field were taking advantage of the brisk demand for export coal to advance the prices to consumers in New England and to the railroads requiring immediate delivery of fuel for their own use.

The report shows that in March and April, 7,151,364 tons were dumped at the five tidewater ports through which soft coal moves to the eastern seaboard points, but that probably 20,000 tons of this amount came from mines in states other than the four named. In the four months following June the report says 18,225,657 tons were dumped, so that the probable amount of six months would be about 26,000,000 tons. In the five years, 1915-19, during the corresponding periods, the dumpings during the six months, June to November, amounted to an average of 16,949,849 long tons, in which terms all tonnages are stated.

Of the coal so dumped, the Commission estimated that export and bunker use took, in March and April, 3,572,619 tons, or 49.9 per cent.

Of the coal dumped during those two months 38.4 per cent moved coastwise. That estimate does not include the coal used for bunkering coastwise ships, or the coal delivered inside the capes at points like Baltimore and other places along the bays.

The Senate wanted to know what number of cars were used in carrying coal that went offshore for foreign bunkering and cargoes. The Commission estimated the tonnage to be 3,572,619; that the average carload was 46.04 long tons, equivalent to 77,598 carloads. It said there were no exact figures showing the time consumed by a car in making the turn-around between the coal fields and the tidewater ports. It said that the estimate of the Tidewater Coal Exchange was 12.1 days and G. N. Snider, coal traffic manager of the New York Central, at 16 days. If the 12.1 estimate were used, it said that only 15,256 cars were used.

Answering the question, "to what extent has the price of coal for locomotive use on American railroads been raised due to the upbidding of coal prices by foreign buyers," the Commission said that in normal times it was not probable that the foreign buyers have any marked effect on the prices paid for fuel for American locomotives because of the relatively small amount of coal exported as compared with the total production in the United States. In a table prepared by the Geological Survey, the Commission said, from 1914 to 1919, both inclusive, the exports of coal were shown to range from 5.58 to 6.19 per cent. In 1918 the exports ran down to 4.93 per cent and in 1915 they were up to 6.13 per cent. In 1920, the Commission said, the exports of soft coal have been relatively greater than in prior years. With an estimated production of 400,000,000 net tons for the first nine months of the year, the exports and bunker furnishings amounted to 8.5 per cent of the total. On the subject of the effect of exports, the Commission said:

"In particular situations, the foreign demand plays a much more important part than is indicated by the comparison of total production and export for the United States as a whole. In the first nine months of 1920, the export and bunker coal through the five ports named in Table I, amounted to more than one-half of the shipments to those ports. Those railroads which were forced to buy spot coal at the exorbitant prices quoted at these ports in 1920 were directly affected by the upbidding of prices by foreign buyers. At Baltimore sales were said to be made in July, 1920, f. o. b. piers as high as $17 and $18 a long ton (Coal Age, July 29, 1920, p. 263). But railroads outside of New England did not generally buy coal at such prices."

The Commission included tables showing that in New England, in July this year, the spot price of coal averaged $9.89, while in July, 1919, it was only $1.82. In July of this year the contract price was, on an average, $3.74, while in July, 1919, it was $2.31.

The average spot price of coal in July, 1920, all over the country, so far as disclosed in prices reported to the Commission by the railroads, was $6.01, while in July, 1919, it was $2.38. In July, 1920, the average contract price was $3.25 and in July, 1919, it was $2.47. In other words, in July, 1919, the railroads could go out into the market and buy spot coal for less than the average contract price. In discussing prices, the Commission said:

"The prices shown in the preceding table are the average prices at the mine. The average delivered prices on spot bituminous coal purchased during July, 1920, for the seven New England roads included, ranged from $11.64 to $14.46 per net ton.

"It would be an error to assume that fundamentally the high prices paid for spot coal are to be ascribed mainly to the large exports. There also has been an abnormal domestic situation. At the time of the armistice in 1918 there was an abundance of coal. Following the armistice consumers drew upon their stocks instead of placing orders for coal. After the bituminous coal miners' strike in November, 1919, the reserves were very low. Progress in restoring them was halted by various factors, such as sporadic strikes at mines, a partial paralysis of transportation, especially in the eastern region, caused largely by the switchmen's strike in April, 1920, resulting in congested terminals, slow movement of both loaded and empty cars, including coal cars, and the consequent delayed return of coal cars to coal-originating carriers. The foreign demand intensified the abnormal domestic demand and the several factors together afforded an opportunity for the exacting of prices not justified by the cost of production. For the country as a whole, the foreign demand was a minor factor, but in that part of the eastern coast section which was dependent on shipments by tidewater lines, the foreign demand was a very important factor."

Answering the question, "to what extent does the eastern coast section of the United States depend on shipments of bituminous coal by water," the Commission said:

"A table compiled by the United States Geological Survey shows that in 1917 New England obtained, for other than railroad or steamship use, 16,960,506 net tons of bituminous coal from Pennsylcania and West Virginia fields, and of this amount 52.77 per cent came via tidewater, and 47.23 per cent by rail. Similar tables for other portions of the eastern coast are not compiled.

"If railroad fuel is included the total receipts of bituminous coal in New England in 1917 may be estimated at 23,500,000 net tons, of which 12,700,000 net tons, or 54.0 per cent, came via tidewater and 46.0 by rail. In 1916 and 1918, the corresponding percentages were approximately 59 per cent via tidewater and 41 per cent by rail, and for 1919 about 48 per cent via tidewater and 52 per cent by rail. The figures reported to the American Railway Association show that in the first nine months of 1920, 161,954 carloads of coal moved to New England by rail. Assuming 47 net tons per car, which is approximately the average on New England roads, the rail tonnage for nine months was 7,611,838 net tons. In the same period the Tidewater Bituminous Coal Statistical Bureau reports 7,979,232 net tons via tidewater, destined to New England. On this basis the percentage was 51.2 via tidewater and 48.8 by rail. It is known that the movement by rail is somewhat understated by these statistics and it is therefore clear that the movement by rail to New England in the first nine months of 1920 was above normal relatively to the movement by water."

## COAL PRODUCTION

*The Traffic World Washington Bureau*

Observance of All Saints' Day on November 1 and election day on November 2 by bituminous coal miners resulted in an output of soft coal of 11,355,000 net tons in the week ending November 6, a decrease when compared with the preceding week of 1,063,000 tons or 9.4 per cent, according to the weekly report of the Geological Survey, Department of the Interior, under date of November 13. In spite of the decrease, however, the output was larger than in the corresponding week of any of the last four years.

Preliminary reports indicate a heavy production during the week ending November 13, loadings on November 8 and 9 being 4 per cent greater than on the corresponding days of the last week of October, during which week 12,418,000 tons were produced, the report said.

The car supply situation continued to show improvement, according to the report.

"A further decrease marked the dumpings of bituminous coal at Lake Erie ports during the week ended November 6" the report stated. "The total dumped as reported by the Ore and Coal Exchange was 849,726 tons, of which 807,594 tons were cargo coal and 42,132 tons were for vessel fuel. This is the smallest amount recorded since the week ended August 7, when the dumpings reported were 832,701 tons, and is a decrease of 231,549 tons compared to the week of October 30. In spite of the decrease, the tonnage handled was equal to that in the corresponding week of 1918 and exceeded both 1917 and 1919.

"The cumulative Lake movement from the opening of the season now stands at 20,893,000 net tons. The year 1920 is thus about *four and a quarter* million tons behind 1917; *seven and a quarter* million behind 1918, but is little more than a million tons behind 1919.

"October receipts at Duluth-Superior harbor were the largest of the year for both anthracite and bituminous coal. The records of the United States Engineer Office show a total of 1,556,000 tons of soft coal, and of 276,000 tons of anthracite unloaded during the month. Cumulative receipts of bituminous coal were 34 per cent short of 1918, and 16 per cent behind 1919. Anthracite receipts, on the contrary, were practically up to 1919, and even ahead of the figure for 1918, when anthracite shipments to the Northwest were limited by the Fuel Administration.

"The distribution of the cargo coal actually handled at Lake Erie during the season of 1920 up to the end of October, has not departed greatly from normal as indicated by past years. According to the Ore and Coal Exchange, of the 19,091,000 tons forwarded, 27.6 per cent went to Canada as against 21.5 per cent in 1919, and 23.0 per cent in 1918. Canada has thus received a larger proportion than normal of the cargo coal moving, though the total tonnage shipped to Canadian destinations has been 11 per cent less than in 1918.

"Reports from the Tidewater Bituminous Coal Statistical Bureau to the Geological Survey show that 1,168,000 net tons of bituminous coal were handled at the tidewater piers during the week ended November 7. This was a decrease of 39,000 tons from the figure for the preceding week. Shipments to New England showed an increase of 61,000 tons, while exports fell off 128,000 tons."

Of the 1,168,000 tons handled at the tidewater piers, 226,000 tons moved coastwise to New England, exports totaled 512,000 tons, and the remainder was used for bunker, inside capes and other tonnage.

"Tidewater shipments continued in volume during the month of October, and a new record of 5,736,000 net tons dumped was established. The increase went to meet the foreign demand for coal," the report continued. "While shipments to New England decreased 269,000 net tons, and the tonnage for other purposes—bunker, inside capes, and other tonnage—decreased 21,000 tons, exports from the five North Atlantic ports increased 579,000 tons.

"A further decrease is noted in the all-rail movement to New England. During the first week of November 4,757 cars were forwarded through five rail gateways at Harlem River, Maybrook, Albany, Rotterdam, and Mechanicsville. Compared with the preceding week this was a decrease of 97 cars, or a trifle less than 2 per cent. No comparison may well be made with the figures for the corresponding week of 1919 because they were extremely low as a result of the strike."

## CAR SUPPLY CONDITIONS

*The Traffic World Washington Bureau*

The semi-monthly bulletin of the car service division of the American Railway Association on percentages of freight cars on line to ownership as of November 1, (Class I roads), issued November 15, showed the percentage in the Eastern district to be 96.8 as compared with 98 per cent in 1919; Allegheny district, 100 as against 99.8 in 1919; Pocahontas district, 100.3 as against 87.1 in 1919; Southern district, 89.7 as against 83.6 in 1919; Northwestern district, 97.9 as against 106.9 in 1919; Central Western district, 97.3 as against 103.2 in 1919; Southwestern district, 111.0 as against 107.9 in 1919; grand total in all districts, 96.8 as against 100.0 in 1919; Canadian roads, 96.6 as against 94.3 in 1919.

The car service division's summary of general conditions as of November 10 follows:

"Box Cars: Supply of cars suitable for grain loading not sufficient to meet all demands, particularly in the Northwest. Generally throughout the country there is a supply of box cars sufficient for ordinary loading. The movement of cars to western roads on relocation orders has been materially reduced, as the deliveries of cars to home roads and in equalization are providing a satisfactory supply. All roads are receiving better delivery of home cars. Care should continue to be exercised to keep ventilated box cars moving to home territory.

"Auto Cars: While there has been a decrease in the demand for automobile cars account reduced manufacturing schedules, there have been some instances of shortages, and cars should continue to be loaded to auto-manufacturing territory. Cars need not be moved empty except under Car Service Rules or when specifically ordered.

"Stock Cars: Efforts must be continued to move cars to owning lines and in accordance with specific orders issued for equalization or relocation.

"Refrigerator Cars: Demand continues for refrigerators in all sections, particularly in eastern, middle western and extreme western territory, and it is necessary that all railroads continue drive to promptly release and move refrigerators to loading territory in accordance with current orders.

"Open Top Cars: Due to the observance of election day and holy days, production in the first week of November fell below the twelve million ton mark and it seems likely that with Armistice Day and Thanksgiving to be celebrated, the average for the present month will hardly be better than 11,500,000 tons per week. The supplement to Service Order 20 issued November 6, releasing an additional number of open top cars from the provisions of the order is one indication of the general easement in coal situation, which has been noticed during the past few weeks. It is generally felt that the continuation of the present rate of production until the end of the year will amply meet the country's requirements. It should, however, be understood by all concerned that the emergency has not passed, and that necessity still exists for the conscientious observance of Interstate Commerce Commission Service Orders.

"Flat Cars: There continues to be a heavy demand for flat cars in the Northwest territory and Southern states to protect shipments of logs and lumber. There should be no let-up in the activities to get this type of equipment promptly released and moved in accordance with specific orders to territories as directed."

The car service division issued the following statement November 15:

"The box car shortage which has been especially marked in the west has virtually been relieved reports just received by the Car Service Division of the American Railway Association show. According to these reports, there has been a noticeable lessening in the demand for box cars in that part of the country, which would indicate that requirements are quite generally being met. An actual surplus was first reported by railroads in Texas, but since then the same conditions have gradually spread to the extent that it may now be said there is available box car equipment under present conditions to meet transportation requirements. Surplus cars, however, continue to be sent to spots still showing a shortage.

"Under orders issued by the Car Service Division and the Interstate Commerce Commission empty cars were primarily sent west for the purpose of increasing the car supply in the grain loading districts. Some of the western roads to which these cars were being sent, however, have indicated that conditions are much improved and that further general relocation of equipment to that territory can be stopped except to return their cars to them.

"In view of this situation, the present time offers a favorable opportunity for such industries as require raw material which moves seasonably under usual conditions to advance such movement somewhat while there is available transportation."

## CAR EQUALIZATION

*The Traffic World Washington Bureau*

In Circular CSD-94, issued to railroads, the car service division of the American Railway Association says:

"Inasmuch as recent reports indicate continued reduction in car shortage and consequent easier condition with respect to car supply, increased opportunity is presented for a selection to be made of cars which are moving on car service division orders, or under equalization arrangements.

"Railroads handling cars under equalization arrangements will not force cross movements upon others, or attempt to forward cars obviously out of route, merely for the purpose of disposing of individual cars, but in disposing of excess cars will forward them strictly in accordance with the provisions of the car service rules. It is essential that particular attention be paid to the handling of cars in accordance with Car Service Rule 3E. All roads are expected to accept cars under the provisions of this rule in a broad and liberal manner in the interests of getting equipment relocated as has been directed by resolutions of the executives.

"Equalization indebtedness as between individual roads may be considered automatically cancelled as of the date when roads refuse to accept such cars by types of classes except under the Car Service Rules. When, however, assistance in car supply is necessary and will result from requiring equalization, such arrangements will be automatically restored as provided in Circular CSD-85, the count to begin as of date of request."

## CARS ON HOME LINES

*The Traffic World Washington Bureau*

"Reports from railroads for November 1 indicate continued progress in returning cars to the home line, the increase during the month of October being 1.3 per cent, and the total of all cars on home line as of November 1, 1920, 31.3 per cent," W. L. Barnes, executive manager of the car service division of the American Railway Association, said in Circular CSD-95, issued to railroads November 15. "The gain was most marked in box cars, this type of equipment showing 2.1 per cent improvement during the month.

"Now that the demands for equipment are being met to a greater degree than in the past few months it will be easier to make a selection of cars for loading to or toward the home line, thus assisting in the program of relocation to the home road to a greater degree. Individual action should be taken accordingly."

# BILL OF LADING HEARING

*The Traffic World Washington Bureau*

At an adjourned hearing on docket No. 4844, In the Matter of Bills of Lading, before Commisisoner Woolley and Examiner Seal, beginning on November 15 at Washington, attorney and traffic managers for shippers by railroad and attorneys and representatives of shipping companies, including the United States Shipping Board, got into what appeared to be a deadlock on what is known as the general exemption clauses of the port-to-port part of the through export bill of lading. Representatives of the shipping interests, under the leadership of Roscoe H. Hupper, speaking for the International Mercantile Marine, the Munson Line, Elwell Lines, Independent Steamship Co., Norton-Lilly Line and the Norton Line, objected to what the representatives of shippers by rail called a simplification of that part of the bill.

As proposed by the National Industrial Traffic League and the Institute of American Meat Packers, the clauses would be reduced to the declaration that "the carrier shall not be liable for loss, damage, delay or default occurring from any cause whatsoever except where the negligence of the carrier is the proximate cause of the injury complained of."

In the form proposed by the Shipping Board, the reasons, names and causes of and for exemptions are set forth in thirty-one lines of fine printing, including barratry of master or crew, of which some of the representatives of shippers confessed they had only the haziest of ideas, conveyed to them by their early reading of Blackstone's lectures and the commentaries thereon by various authors. Attorneys for the shipping interests said that "barratry" is very rare and that as a practical matter, its inclusion in the general exemption clauses amounted to little in exempting the ship.

"Then why not omit it?" asked Seth Mann, who was representing the Pacific coast interests, which through John B. Willis, have also submitted a form for the port-to-port part of the bill of lading which Congress has said the Commission shall prescribe.

Mr. Hupper, appearing in dual capacity as witness and attorney, said the shipping interests object to the elimination of the language because, chiefly, the meaning of all the words and phrases used therein has been made clear by the line of cases arising thereunder. Their elimination and the substitution therefor of other language, he said, would lead to litigation, without any practical benefit arising therefrom.

"Is it not the object of those who have drawn ship's bills of lading to embody therein all the benefits of the laws, without giving the shipper any information at all as to his rights under the law?" asked Mr. Mann. Mr. Hupper said that the shipper is charged with knowledge of the rights the law gives him. Mr. Mann quizzed Mr. Hupper and brought from him the admission that the clauses as written in the form approved by the shipping interests might exempt the carrier from liabilities in ports of destination which they would have to assume under the form proposed by the shippers. In particular Mr. Mann asked about the fire clause which, to the ordinary man, might be read as exempting the ship from liability to the shipper, even if caused by negligence or even malice, when as a matter of fact the American law grants no such exemption. Mr. Hupper called attention to the fact and that laid the foundation for Mr. Mann's suggestion that the clauses as embodied in the form approved by the shipping interests might give such exemption in ports of destination.

The intended order of discussion on the bill of lading was changed at the beginning, so as to bring forward the port-to-port part in which the shipping men were alone interested. The program called for a discussion of the form proposed by the National Industrial Traffic League. Luther M. Walter, appearing as attorney for the League, placed Frank T. Bentley on the stand as a witness. Mr. Bentley began pointing out the changes in the rail part of the bill that were made by the League on further consideration of the subject. The shipping men suggested that in the interest of the attorneys and witnesses for the shipping men that part II, or the port-to-port part, be taken up so that it could be disposed of and the attorneys and witnesses for the ocean interests permitted to go about their other business, especially in view of the fact that the attorneys for the railroads and shippers were interested in both parts and would have to remain all the time while the vessel men were interested only in part II. It was agreed to do that.

The subject matter is not arranged in the same sequence in the various forms. The general exemption clauses proposed by the shipping interests are carried in section 5 of the form proposed by the Shipping Board while in the form proposed by the National Industrial Traffic League, they are carried in the first paragraph of the first two sections in the one sentence hereinbefore quoted.

On the subject of general average, carried as the second paragraph of the first section in the National Industrial Traffic League form and as the sixth sentence in the Shipping Board form, the shipping interests came to an agreement with the other participants in the hearing by adding language suggested by the Pacific coast interests, to the effect that while generally general averages shall be payable in accordance with the York-Antwerp rules of 1890, points not covered by those rules shall be settled in accordance with the rules and law of the port of New York. That agreement was accepted in place of the suggestion that the points not covered by the York-Antwerp rules should be settled in accordance with the rules and law of the port of shipment, as for instance the rules and law of New Orleans or of San Francisco. New York rules and law were accepted in the interest of uniformity, which was the compelling reason for the acceptance of the incomplete York-Antwerp rules of 1890.

It was further agreed that the National Industrial Traffic League form should be changed by making section 4 a part of section 2, because both give the ship the benefit of the exemptions carried in the Harter act of 1893, known as sections 4281-86 of the revised statutes of the United States. That acceptance, if the National Industrial Traffic League form becomes the form of the bill prescribed by the Commission, will cause the numbers of the sections to be changed.

Difference of opinion as to the meaning of the words "invoice value" as used in the National Industrial Traffic League form, and "invoice cost" led to a discussion of the valuation section, in which it is proposed that the ship shall be liable unless otherwise stated in the bill of lading, for not more than $250 per package, in the case of loss or damage. Mr. Hupper suggested the substitution of "cost" for "value," but the traffic managers for shippers objected on the ground that "invoice value" is a thing that every shipper by rail knows, whereas "invoice cost" is something that is unknown and might be construed as meaning manufacturing cost or something entirely different than the selling price as shown in the invoice.

Mr. Hupper said that the increase in the valuation per package was not made on account of the increased ship rates but merely because it was recognized that articles now shipped have a higher value than the $100 which was considered a fair value to place on the average articles shipped pre-war. He said the $100 was an arbitrary amount agreed upon as being a fair sum to be paid by the carrier in case of loss. He said that sum apportioned the loss between shipper and carrier. He said than 95 per cent of the claims for loss are filed to cover losses from pilferage, and that the ship owners pay such losses simply because they had not the opportunity to check up on dishonest checkers and teamsters.

"Most ships are operating at a loss now," said Mr. Hupper by way of answer to the suggestion of Mr. Walter that the increase in the package valuation was made on account of the higher value of the articles transported and the higher freight rates.

Walter Berry, for the Shipping Board, said that that body had agreed to the $250 valuation on some packages and then found itself liable in an amount in excess of the market value of the articles transported. He had reference, he said, to bales of cotton, which are now worth less than the sum for which the board is liable in the event of loss, if the provision is taken as establishing the liability of the board.

At the afternoon session of November 15, with Mr. Bentley still on the stand, it was agreed that the National Industrial Traffic League form should be changed by substituting the word vessel for steamer or ship wherever the last mentioned words may be used, so that there may be no dispute based on anything so fragile as the designation of the kind of craft employed. It was further agreed that the word goods should be used in place of cargo, because the shipper to whom the bill is issued is seldom the owner or shipper of the whole cargo. Another change agreed upon was that the parties to the agreement shall be known as the shipper and ship-owner so as to avoid confusion. A still further modification was to the effect that when the ocean carrier was meant, the word carrier should be modified by the use of the word ocean.

In the eleventh section of the League form, it was agreed to substitute the word value for the word price, so as to make the section read: "In the event of claims for short delivery when the vessel reaches her destination, the value shall be adjusted as per conditions under clause 3."

Throughout the hearing at the afternoon session the suggestion was that if the verbiage that has long been employed by ship-owners means what the shipping men contend, there should be no objection to changing it as desired by the attorneys and traffic managers of the shippers. The shipping men, however, insisted that it would be better to continue using the words which had run the gauntlet of the courts than to import words the meanings of which had not been defined in admiralty litigation. The shippers also suggested that if the ship-owners were not asking for exemptions other than allowed by the Harter and other laws of the United States, it would be advisable to say so.

Evidence of a division of opinion in the National Industrial Traffic League as to the kind of connection there shall be between the proposed through export bill which the new transportation law requires the Commission to prescribe, was brought at the hearing on the morning session of November 16. The division was shown in connection with the discussion on Section 17 of the form of the port-to-port part of the League's proposal. While

Frank T. Bentley was continued on the witness stand as the spokesman for the League in explaining what the League proposed, Charles E. Herrick, vice-president of the Brennan Packing Company and chairman of the traffic committee of the Institute of American Meat Packers, was brought forward by Luther M. Walter, attorney for the League, to present the views of those members of the League who disagreed with the form agreed upon by a sub-committee of the League's bill of lading committee that conferred with a committee of shipping men representing the North Atlantic Conference. That sub-committee was composed of Mr. Bentley and F. H. Price of the Millers' National Federation.

Messrs. Bentley and Price agreed that the proposed export bill of lading, in its port-to-port part, should be subject to the general bill of lading of the ocean carrier accepting the goods and to all local rules and regulations at port of destination not inconsistent with the proposed port-to-port part of the through bill.

When that agreement was submitted to the League's bill of lading committee it changed Article 17 so as to leave out the subjection of the proposed bill to the general bill of lading of the ocean carrier accepting the goods for further carriage. Mr. Bentley explained Section 17 as it appeared in the printed form the League submitted to the Commission, but indicated that, as a practical matter, when the goods arrive at the port of exportation the question will be whether the ocean carrier will accept them on the bill of lading prescribed by the Commission, to the exclusion of the ocean carrier's bill of lading. Mr. Price took the stand to corroborate Mr. Bentley. He went still farther than Mr. Bentley into the intricacies arising from the fact that while the carrier by rail is an insurer of the goods it carries, the carrier by water is not, and so far as known now, Congress cannot force such a carrier operating under a foreign flag to make through route and joint rate arrangements with the carriers by railroad, operating under American laws, and that the whole scheme of through route arrangements may break down through the refusal of the foreign ships, and possibly even the Shipping Board ships, to accept a bill that wholly displaces the general bill of such ship lines.

Mr. Herrick took the stand to explain that the shippers in this country object to signing a bill of lading, presented by a railroad agent, that commits them to the terms of bills of lading issued by carriers by water, which they have not had an opportunity even to read. He said the Chicago agents of the International Mercantile Marine, for instance, decline to provide copies of the general bill of lading on the ground that they cannot know, when showing the copy, that that is the bill that will be in effect when the goods reach the port.

"When have they declined to furnish copies of the general bill?" asked Mr. Hupper, representing the International Mercantile Marine and other shipping lines.

"I can't give specific dates without consulting my files," said Mr. Herrick, "but they have never allowed us to see the general bill. Packers want to know when they start their goods upon what terms they will be carried and that they will be carried in suitable ships, if a shipment does not reach port in time for the particular suitable ship mentioned in the reservation."

"Did you ever apply to the New York offices?" asked Mr. Hupper. Mr. Herrick said he had not, because he was doing business in Chicago.

Ralph M. Merriam, representing shippers of chewing gum, asked that Section 16 of the League form be amended so that in case the ship carrying the goods from the first port was not able to take them to the second port mentioned in the bill, which second port was to be the place for delivery to a connecting carrier, that the ocean carrier be required to give notice to both consignor and consignee of the fact, Shippers of gum, he said, are often unable to find what has become of their shipments because notice is not sent when the ship fails to take the goods to the port at which transfer was to have been made. The shipping men said that it is the practice of shipping companies to give such notice, but they would not like to be bound down by a contract so to do. Luther M. Walter suggested that if there was an agreement to that effect, it might be construed that the ocean carrier had the right to change the transfer point if and when it pleased. The object of the bill, he said, was to make an arrangement which would bind the ocean carrier to be responsible for getting the goods to the transfer point mentioned in the contract. It was agreed that if provision for such notice was to be made it had better be inserted in the first section, at the end of the first line. That first line sets forth that the ship may sail with or without pilots and to transship the goods.

Simplification of the form proposed by the League was agreed upon, the agreement being that Sections 9, 10 and 14 should be combined into one. They relate to sale of goods to cover freight; the liability of the shipper to pay any deficiency existing after such sale in the event the goods do not bring enough to cover the freight; the liability to pay full freight on unsound or damaged goods; and the retention of prepaid freight if the ship so much as receives and stows the freight.

The proceedings on November 16 seemed to indicate that when the Commission agrees upon export bill the question will be whether it will be accepted as a substitute for the dozens of bills of lading issued by the shipping lines. The question exists even as to the ships of the Shipping Board, which are government vessels, and therefore might be expected to comply with the wish of Congress, expressed in the transportation act, which is interpreted as being that there shall be a bill of lading that will cover the transportation from point of origin to destination, much as do bills of lading issued in compliance with the terms of the Carmack amendment to the interstate commerce law.

Hearings on the case were finished at the afternoon session of November 16, at which the railroad part was gone over. Only one major objection was raised to the National Industrial Traffic League form for the railroad part, other than the general objection that the Commission has not the power to prescribe bills, but merely to regulate them after they have been formulated by the carriers. The single objection was to the elimination by the League of the section which, if retained, would limit the carrier liability of the railroad to the end of free time, after which its liability would be that of a warehouseman only. In the league form the carrier liability is continued until the goods have been placed aboard ship.

Shippers objected to what they called the proposal to create a hiatus. They contended that their goods, after reaching the port, continued in the possession of the rail carriers until placed aboard ship and the carrier liability as insurer of the goods should continue as long as the possession of the goods continued.

J. J. Hooper, of the Southern, was put on the stand by R. V. Fletcher, in behalf of the southern carriers, to set forth the objection to a continuance of the carrier liability until the goods might be placed on the ship. Henry Wolf Bikle stated the objections of the eastern carriers and R. C. Fyfe adopted the testimony of Mr. Hooper as the views of the western railroads.

Briefs are to be filed on January 1. Examiner Seal, who sat alone on the last day, asked whether it would not be satisfactory to have the briefs ordered for thirty days from the time of concluding the hearing, but Mr. Bikle called attention to the fact that the parties to the case have not yet received a transcript of the testimony taken at the San Francisco hearing, held weeks ago. Upon representations by the lawyers that they could not get ready to argue the case in December, the examiner fixed January 1 as the day on which briefs must be filed.

## WISCONSIN RATE CASE

*The Traffic World Washington Bureau*

Although all participants tried to avoid duplication, considerable of the ground covered in arguments in other cases of that character was again traversed in arguments November 12 on the case arising out of the decision of the Wisconsin railroad commission that its jurisdiction does not extend to the raising of intrastate passenger fares to the 3.6 cents per mile level prescribed by the Interstate Commerce Commission, in its decision in Ex Parte No. 74. Kenneth F. Burgess, for the railroads, and Carl D. Jackson, a member of the Wisconsin commission, made their arguments at the morning session.

Broadly speaking, Mr. Burgess contended that taking sections 13 and 15a together, the Commission has full power to remove discriminations against interstate commerce caused by such lack of uniformity, without considering whether there is competition between persons traveling on the same trains, one on state fares and the other on interstate fares. He contended that unless the state rates are raised to the level of the interstate, the carriers will not obtain the net railway operating income prescribed in section 15a, and that was warrant enough for an order from the Commission to do away with the discrimination.

Commissioner Jackson contended that the power to remove discrimination is no greater under the amended law than under the old statute because the language used in that section is the language that was used by the Commission and courts in disposing of Shreveport situations and that to base an order on any ground other than that the relationship was not proper would be equivalent to the federal body passing on the reasonableness of state rates, which, he said, is as much beyond its power now as it ever was. Nowhere, he said, could there be found any language even hinting that the federal Commission had received such power.

John E. Benton, for the National Association of Railway and Public Utility Commissioners, A. A. McLaughlin and Alfred P. Thom, for the railroads, used the afternoon hours. They tried to avoid the ground that had been covered in prior arguments, but questions by commissioners and by opposing counsel brought them around to ground that had been traversed in earlier cases.

At the end of his argument Mr. Thom asked the Commission to advance arguments in the Iowa, Michigan and Minnesota

cases on the ground that they are unlike the cases of other states, in some particulars to which attention should be devoted.

Mr. Benton, in his argument, referred, as much as his respect for the rule that votes and speeches do not show the intent of a legislative body for passing a particular law would let him, to the history of the amended act, to enforce his point that there must be a showing of discrimination to be removed before the jurisdiction of the federal body attaches to state rates. He agreed with the carrier contention that Congress commanded the Interstate Commerce Commission to establish interstate rates high enough to yield a return of 6 per cent, and then said that Congress expected the states to see to it that the state rates were high enough to bear the proper share of the burden of supporting the transportation system.

In answer to questions by Commissioner Aitchison, Mr. Benton said it was his idea that Congress intended that the states should have an opportunity to adjust their rates. He assented to the interrogative suggestion of Commissioner Aitchison that Congress intended that the nation should wait on the Wisconsin legislature a year and nine months, if necessary, for it to increase state fares.

The year and nine months' period was suggested because, in some states, there are only biennial sessions and the interval between sessions is a year and nine months.

A. A. McLaughlin contended that the amendments to the law create a discrimination in which a state might indulge other than the discrimination shown when the Commission acts on Shreveport situations. He contended that Wisconsin had had an opportunity to bring her fare law into harmony with the national policy of assuring the railroads as a whole a return of six per cent. Answering Mr. Aitchison, Mr. McLaughlin expressed the belief that the returns to the railroads in the western district are not as high as the Commission ordained.

"Is that fact or tendency shown in the record," asked Aitchison, "or is it something we are expected to dig out?" Mr. McLaughlin thought the record would show it.

Mr. Thom devoted considerable time to showing that Senator Cummins did not contradict himself, as Commissioner Daniels seemed to think, in his statement as to what the committee had done. One statement seemed to show that the committee had not gone farther than the principle laid down in the Shreveport case. In the next assertion he seemed to say that the new legislation conferred power on it that it had not had before. The declarations, as read by Mr. Thom, made it appear that the Iowa senator asserted that the committee had not gone farther than the cases before the Commission which the Supreme Court had upheld. The assertions, he said, were not contradictory. Those who heard him recalled that in helping the railroads carry out the ideas embraced in the Shreveport case, the Commission had set before them the rates which it thought would be reasonable for them to apply for transportation in Texas. The order of the Commission did not require them to establish the rates set forth by it, but the railroads accepted them and put them into effect.

## SHIPPING BOARD APPOINTMENTS

*The Traffic World Washington Bureau*

Recess appointments to the United States Shipping Board as created by the merchant marine act of 1920 were announced at the White House November 13.

Admiral Benson, the present chairman of the board, was appointed for the six-year term and designated as chairman. The other six members as appointed by the President are as follows: Frederick I. Thompson, newspaper publisher of Mobile, Ala., appointed as Democrat for term of five years; Joseph N. Teal, attorney, of Portland, Ore., appointed as Democrat for term of four years; John A. Donald, of New York, present member of the board, appointed as Democrat for term of three years; Chester H. Rowell, until recently owner of a newspaper in Fresno, Calif., appointed as Republican for term of two years; Guy D. Goff, of Milwaukee, Wis., and general counsel of the Shipping Board, appointed as Republican for term of one year; Charles Sutter, a business man of St. Louis, Mo., appointed as Republican for term of one year.

Admiral Benson was appointed as a Democrat. The law provides that not more than four of the seven members shall be from one political party. As the terms of the first members of the new board expire their successors will be appointed for terms of six years.

The appointment of the new board put an end to the reports that "so-and-so" had been selected for the board, but the fact that the appointments must be confirmed by the Senate still injects considerable uncertainty into the question of whether those now named will really constitute the board after March 4, 1921, when the new administration goes into office. It was regarded as quite possible that the Senate would withhold action on the nominations until after March 4.

The Atlantic coast representatives are Admiral Benson and Commissioner Donald; the Pacific coast representatives are Mr. Rowell and Mr. Teal; the Great Lakes region representative is Mr. Goff; the Gulf coast, Mr. Thompson; the interior, Mr. Sutter. The new law provides for the representation on the board of each of these regions.

Congress did not make any appropriation to cover the salaries of the new board members, who are to be paid $12,000 annually, and if the appointees accept, it is understood they will serve without salary until action is taken by Congress.

Mr. Rowell has been active in politics in California for years. Mr. Teal is a commerce lawyer. He represented the northwest lumber interests in the advanced rate case before the Interstate Commerce Commission and has also appeared in numerous other cases affecting the northwest rate situation. Mr. Sutter is said to have been interested in ocean shipping between the Southern ports of the United States and South America. Mr. Goff formerly was district attorney of Milwaukee and United States district attorney for Wisconsin. He served as a colonel on General Pershing's staff in France during the war. With Mr. Thompson, of Mobile, and Mr. Rowell the board will have two newspaper men on it. Admiral Benson succeeded John Barton Payne as chairman of the board, and Commissioner Donald has been a member for several years.

Following the announcement of the appointment by President Wilson, the belief obtained in Washington that probably not one of the appointments would be confirmed by the Senate.

Attention was directed to the fact that the President gave the longest terms to the appointees designated as Democrats and that this would be one of the reasons why confirmation would not be forthcoming by the Republican Senate.

The politics of Chester Rowell, of California, who was appointed as a Republican, also came up for discussion. Rowell, according to information here, supported Roosevelt in the Progressive campaign of 1912 and shortly before the last election came out in favor of the election of James M. Cox, the Democratic candidate for President. It is not believed, therefore, that there is much chance for his confirmation as a Republican member of the Shipping Board.

It is also understood that while there would not be much opposition to the confirmation of the appointment of Admiral Benson as a member of the board, opposition will develop to his confirmation as chairman and for a term of six years, the belief being that the new administration will desire to designate the chairman of the board.

## RIVERS AND HARBORS CONGRESS

*The Traffic World Washington Bureau*

The official call for the sixteenth annual convention of the National Rivers and Harbors Congress in Washington, December 8, 9 and 10, has been issued by John H. Small, president, and S. A. Thompson, secretary.

The need of transportation facilities is discussed in the call with the declaration that the utilization of the waterways would solve the problem.

"We have 28,000 miles of nominally navigable waterways, less than 2,000 miles of which have dependable channels," it is set forth in the call. "France, Belgium, Holland and Germany —as it was before the war—which together are only one-seventh as large as the United States, have 23,200 miles of inland waterways which are actually navigable.

"Our rivers are going to keep on running. Why should they not be improved and put to use? And why should we continue to dawdle along so it will take fifty years to finish the job? A government that can order its people to pay an additional $133,000,000 a month to the railways could well afford to invest $100,000,000 a year in the improvement of its waterways."

The waterway problem will be discussed at the convention by Maj. Gen. Lansing H. Beach, chief of engineers, U. S. Army; Brig. Gen. W. D. Connor, chief of the division of inland and coastwise waterways service of the War Department; and S. Wallace Dempsey, of Lockport, N. Y., member of the House committee on rivers and harbors.

"It is no secret that most old-time steamboatmen think that the towboats which have been built for use on these barge lines, all of which are of the 'tunnel' type, will prove to be disastrous failures," it is stated in an announcement by the organization, referring to the inland waterways service. "Some of the new towboats are now in use and a report on their performance is awaited with much interest. General Connor's address will be illustrated with moving pictures."

"The necessity for a great increase in our transportation facilities is immediate and urgent," said Mr. Thompson. "The railroads are entirely unable to meet the needs of the situation and the experts who have studied the matter report that to put them in condition to do so would require the expenditure of no less than $18,000,000,000.

"Motor trucks on good roads can do a lot, but they can not begin to handle the bulky and long distance traffic which must be moved. Damage amounting to millions of dollars has already been done to the roads of the country by putting upon them a burden which they were not built to carry.

"Waterways can carry more traffic, and do it at a less cost, than any other form of transportation. The expenditure of $100,000,000 a year for ten years would create a system of waterways and harbors which would supplement our railways and highways and completely solve our transportation problem. There is no question that the government could get the money.

"A billion dollars is a tidy sum of money, considered by itself, but it is insignificant in comparison with the benefits which will certainly result if we improve and use our waterways and harbors or the losses that will surely follow if we leave them unimproved and unutilized."

## SHIPPING BOARD INVESTIGATION

The investigation of the House select committee, headed by Representative Joseph Walsh, of Shipping Board operations, now in progress in New York City where the committee has been sitting, apparently will extend over a prolonged period of time, particularly if rebuttal testimony is heard from those who are involved in the charges made to date.

Chairman Walsh has announced that among those who will be heard by the committee in the course of its investigation are Charles M. Schwab and Charles E. Piez, former heads of the United States Shipping Board Emergency Fleet Corporation, and Edward N. Hurley and John Barton Payne, former chairmen of the board, and Admiral Benson, the present chairman.

Perusal of the testimony taken thus far by the committee indicates that some of the charges made by the committee's investigators, A. M. Fisher and J. F. Richardson, as to inefficiency and waste are based on facts.

Commander Abner Clements, executive assistant to Admiral Benson, told the committee some of the charges as to waste and inefficiency were true, but that the mismanagement was due to amateurish methods rather than to any criminal intent. The board had taken steps to correct lack of efficiency and also the loose management which obtained during the war, he said.

After the termination of the war, Commander Clements pointed out, there was a "general exodus" from the Shipping Board offices and this resulted in decided changes in the personnel of the organization.

There has been a lack of co-operation among the various departments of the board, the commander said, but he attributed whatever abuses there were or had been to the many changes in the personnel of the board forces. He said there were instances of exhorbitant charges for ships' supplies but that such cases were in the minority. He said perfect co-ordination of the various phases of the board's activities had not yet been realized.

Under the present system under which the board is operating its vessels, the committee was told by the commander, it was difficult to ascertain definitely whether profits have been made or losses incurred in the operation of the government's vessels.

Considerable testimony was given before the committee by John F. Richardson, one of the committee's investigators, in support of the charges made in the report to the committee. He offered testimony as to particular instances in which he charged there had been mismanagement and waste. He declared his whole purpose was to bring to light the bad business methods used by the Shipping Board in order that they might be corrected and put on a business basis.

John T. Meehan, deputy chief of the division of investigation of the Shipping Board, told of efforts of the board to stop the practice of subordinate officials in charge of navigation of the board's vessels taking bribes. He declared that losses to the board due to political influences were relatively small. He referred to instances of petty graft by subordinate officials of Shipping Board vessels. He believed that prohibition of the inclusion of intoxicating liquors in the personal belongings of marine officers on board ship would tend to improve conditions in the operation of the merchant marine.

## COMPLAINT AGAINST S. P. BOATS

*The Traffic World Washington Bureau*

Application has been made to the Commission by the Lake Charles Rice Milling Company of Lake Charles, La., in the form of a complaint against the Southern Pacific Company, for the application of the fifth section of the interstate commerce law to the water property of the Southern Pacific companies. The complaint is based on the allegation that the further control, ownership and operation of steamboats and steamships by the companies compassing that system is no longer in the interest of the public or of advantage to the convenience and commerce of the people, and of the rice industry in particular.

That complaint was sent to the Commission on September 4, but not given to the public until November 12. Inasmuch as complaints are not filed as a matter of right, but as a matter of privilege, the Commission exercised its supervision over this one to the extent of seeing to it that the names of the defendants were included in the pleadings and to the extent that some offense against the interstate commerce law was set forth.

Thus far no shipper has ever filed a formal complaint asking the Commission to issue a decree of divorce separating a carrier by railroad and its water property. All the cases that have been passed upon by the Commission thus far were begun on its own motion, supported by the testimony of dissatisfied shippers.

The complaint was prepared and filed by A. Pace, the rice milling company's traffic manager. He has been fighting rate adjustments in the territory in which the Southern Pacific is one of the dominant figures, and in a number of instances he has procured orders requiring far-reaching changes in rates. Recently he procured an order requiring transit on California rice stopped at Lake Charles for milling.

While the correspondence included in the docket file made up in connection with this complaint does not show anything of the kind, it is suspected that the complaint against the Southern Pacific as the owner and operator of steamship lines is the outcome of dissatisfaction with the rate adjustments which the Southern Pacific has made or defended when attacked by the rice milling company, which has mills in the southwestern rice fields. Its prayer is that the Southern Pacific be required to let go of the Morgan line, except tank steamers bringing fuel oil for company use, from Tampico to gulf ports; of the Franklin & Abbeville Railroad Boat Line and the boat line on the Sacramento River, but that, within thirty days the rail lines constituting the Southern Pacific system be required to enter into joint rate arrangements with boat lines operating between the gulf and Atlantic ports, now or hereafter established.

## BENSON ADDRESSES PETROLEUM INSTITUTE

*The Traffic World Washington Bureau*

"We are now facing the most unrelenting and stifling competition of nations trained in all the fine points of ship operation," declared Admiral Benson, chairman of the United States Shipping Board, in an address, November 18, before the American Petroleum Institute at Washington.

"One of our greatest advantages lies in the fact that about seventy-five per cent of our entire fleet burns oil for fuel, as compared with about fifteen per cent for all foreign shipping. This advantage can not be realized to the fullest extent unless the Shipping Board and the American merchant marine as a whole can be assured of an adequate supply of fuel oil not only now, but of more importance, in the future as well, at reasonable prices. To this end I have no hesitancy in appealing for a continuation of that support which the American petroleum industry has so patriotically tendered in the past."

Admiral Benson said the board's requirements for fuel oil in 1919 amounted to approximately 18,000,000 barrels, and for the year 1920, 30,000,000 barrels, and that for the year 1921 it was estimated the requirements will be approximately 40,000,000 barrels. He said that of the 140 Shipping Board vessels operating from Pacific coast ports, only one burns coal as fuel.

Under the board's first fuel oil contracts, made to cover the period from April, 1919, to April, 1920, the Admiral said, prices ranged from 74 cents to $1.15 per barrel, for approximately 12,000,000 barrels. The remainder of the board's needs was met by purchases in the open market at prices from 75 to 100 per cent in excess of contract prices. In March, 1920, contracts were made at prices ranging from $1.34 to $2.07 per barrel. Under contracts recently made prices range from $1.50 to $2.30 per barrel.

"The Shipping Board," he continued, "though rather late in launching its foreign bunker station program, has diligently pursued the policy of creating fuel oil bunker stations at strategic ports on established trade routes. In October, 1919, we completed our first foreign bunker station on Hassel Island, St. Thomas, V. I. This station has a storage capacity of 110,000 barrels and will shortly be increased to 220,000 barrels. The board has also constructed fuel oil stations at Honolulu, which has a storage capacity of 110,000 barrels, and at Manila, which has a storage capacity of 165,000 barrels, and has also provided floating storage at Ponta Delgada, Azores, for 22,000 barrels of fuel oil. In addition to these stations, we have contracted with various oil companies to receive, store and redeliver fuel oil for our account at Shanghai, Iquique, Rio de Janeiro, Bizerta, Brest, Genoa, Savona and Hamburg. These stations are supplied with fuel oil purchased under our contracts and transported in Shipping Board tank steamers, and their creation has enabled the board to supply seventy-five per cent of its foreign fuel oil requirements at a saving of millions of dollars per annum. The establishment of these stations has in each instance had the effect of reducing the price of fuel oil on the open market to a marked degree, thereby benefitting shipping in general.

"We have for over a year suffered seriously from the effects of insufficient tank steamers with which to transport our constantly increasing requirements of fuel oil and the tank steamer fleets of the established oil companies were totally inadequate to meet the demand. A large number of our tank steamers in order to keep them fully employed were chartered to private companies before the growing demands of the merchant marine created such a shortage in tank steamers, and they were thus

beyond our control during a considerable period. This condition, I am glad to say, has been rapidly corrected and early in the year 1921, we will have at our command sufficient tank steamers to enable us to expand our bunker station program and eliminate the purchase of oil on the open market, which will result in further enormous savings.

"Lubricating oils also play an important part in ship operation and our requirements of this product now amount to approximately 4,000,000 gallons per annum. Our first contracts for lubricating oils were made in October, 1919, for all domestic ports for one year, at prices substantially fifty per cent below the prevailing market and we have recently executed contracts for another year."

## SCHOYER SPEAKS TO OIL MEN

*The Traffic World Washington Bureau*

In a talk to the traffic managers of the petroleum industry, assembled in Washington on November 17, and the two following days, as the transportation department of the American Petroleum Institute, A. M. Schoyer, manager of through freight traffic of the Pennsylvania system said that the day of the man with the hammer had passed; also that the man always in favor of the soft pedal is no more, but that the watchword henceforward, for both carrier and shipper, must be co-operation.

"Criticise us freely, but not too freely, to our faces but not behind our backs," said Mr. Schoyer, speaking to men, many of whom, like M. J. Gormley, the head of the transportation department of the Institute, formerly were railroad men. He said that whatever of success the oil traffic managers have had during the last two or three years, was due to the system of consolidating shipments so they can move forward in trainloads from points of origin and in comparatively large blocks in trains, the contents of which must be something other than oil.

"If you could make the blocks a little larger," said Mr. Schoyer, "you would probably find that many railroads would forward the blocks as trains instead of seeking to fill-up cars to make the tonnage moving large enough for a modern locomotive. Twenty-five cars is not much of a bite for a modern locomotive.

"We owe each other friendly criticism. A cousin of mine pleaded with me for half an hour to tell him his fault and when I did so, he did not speak to me for three months. But the criticism was frank. We owe it to each other to point out what we think are faults. If we know about a sore spot as soon as it develops it may be cured, while, if it is allowed to continue until it becomes a cancer, its cure may be impossible.

"We need more information about each other. A short time ago a train of oil was to be moved. Seventeen men were notified, but the two who could have done something to expedite it were overlooked. The seventeen who received the notice wrote to somebody else and the latter continued the correspondence, but the right men did not hear about the train. The railroads are doing something in the way of check passing reports to keep in closer touch with the movement of tank and other kinds of cars. The car record offices are not and cannot be in close enough touch.

"We have been thinking about a method of appraising train conductors and yard masters about the importance of keeping the tank car moving. There should be no rest for the tank car. This method consists of a large envelope with car numbers on the outside and the bills inside. The idea is that when a yardmaster or conductor finds that envelope he knows that the cars mentioned in the form on the outside must not be delayed except for bad order. Oftentimes, nowadays when a yardmaster knows that a train has come into his yard with more cars than can be hauled over the other division he chops off the last forty cars and then, after the operation is completed, he finds there are tank cars in the part that has been cut off that should not have been taken out of the train. From that time forward the detached cars keep wandering around, whereas if the yardmaster had had something to tell him at a glance that certain of the cars in that train must not be taken out to lighten it for the division over which it is about to pass, he would not have broken up the train in that way.

"The remedy for the deficiencies is not more tank cars, but a more efficient use of the cars you already have. This country is well supplied with cars for the business to be done. I don't believe you men want to flood the country with tank cars. It is somebody's duty to spur up the railroads so as to keep the cars moving. We all know the difficulties the railroads have had with green men in the yards and with green men in the shops. The quality of the labor is improving but the turn-over in the New York terminal has simply been enormous."

Mr. Schoyer said that the transportation department of the Institute is entitled to great credit for what it has done, but that it will be entitled to more for what it will accomplish in the future because it will establish a closer connection between the shippers and the railroads.

Mr. Gormley said that recent statistics put out by the Commission show that in the first three months of 1920, the railroads of the country transported 284,000 tank cars of oil, 223,000 cars of corn and wheat and 568,000 cars of animal products, but the cars containing animal products carried 1,500,000 fewer pounds of freight than was carried in the smaller number of petroleum tank cars.

"In a revenue sense then," suggested Mr. Gormley, "one tank car of oil seems as desirable as three of animal products. Of course, the advantages accruing to the railroads of being able to move packing house products in trainloads is not to be overlooked, but I believe the suggestion of Mr. Schoyer that the oil traffic is one worth cultivating, is a sound one."

## PANAMA CANAL TRAFFIC FOR SEPTEMBER

*The Traffic World Washington Bureau*

(Commerce Reports, Nov. 15.)

Data just compiled give the number of ocean-going commercial ships passing through the Panama Canal during the month of September as 256, in addition to which there were 12 United States government vessels, including 2 submarines, 1 mine sweeper, 6 merchant vessels with coal for the navy, 2 army transports, and 1 navy supply ship.

The Panama Canal net tonnage of the 256 commercial vessels aggregated 1,008,795 tons, 57,440 greater than for August. Their registered gross tonnage was 1,293,470, and their registered net tonnage 817,810. The total cargo carried was 1,009,557 tons of 2,240 pounds, 31,183 tons less than the preceding month. Of this total, 2,130 tons were carried as deck cargo. The total number of vessels and craft of all kinds through the canal for September was 274, as compared with 201 for August. The total tolls earned were $1,010,166, as compared with $936,209 for August. The average number of toll-paying vessels per day was 8.73, and the average tolls per vessel $3,855.60. Tolls collected amounted to $1,003,531.

The United States coastwise trade for September included 23 vessels, with a total Panama Canal net tonnage of 90,247, and cargo of 110,231 tons. There were 12 vessels from the Atlantic to the Pacific, with a total Panama Canal net tonnage of 44,651, and cargo of 50,450 tons; and from the Pacific to the Atlantic coast 11 vessels, with a total Panama Canal net tonnage of 45,596, and cargo of 59,781 tons.

## RECONSIGNMENT PROTESTS

*The Traffic World Washington Bureau*

The Commission has set an informal hearing for November 23 on the protests charging that the reconsignment and diversion tariffs published to become effective December 1 are not in compliance with its order in No. 10173. The general reconsignment case protests have been filed against the Southern Pacific, Atlantic Coast Line, Santa Fe, Charleston & Western Carolina, Northwestern Pacific, Seaboard Air Line, Southern, and Sunset tariffs.

The Commission has received many protests against tariffs filed by carriers which purport to be in compliance with its views expressed in No. 10173, "Reconsignment and Diversion Rules," opinion No. 6343, 58 I. C. C., 568 (Traffic World, September 11, p. 481).

The protests are based almost wholly on the ground that the new rules, if permitted to become operative in the terms employed by the carriers, will deprive shippers of privileges they have long been using, or make them so expensive that prohibitions might as well be inserted in the tariffs. The protests are coming largely from shippers of fruits and vegetables in California and Florida.

Protests are also being received from shippers of grain and grain products, claiming that the tariffs, filed by carriers in supposed compliance with the Commission's views, as expressed in its report on the formal complaint of the Boston Chamber of Commerce against the New England carriers' interpretation of the reconsignment rules, are in violation of the views expressed by the Commission, and asking for their suspension.

The tariffs concerning which the Commission's Suspension Board will hold an informal hearing are as follows:

Southern Pacific Company tariff I. C. C. No. 4555;

Atlantic Coast Line Railroad Company tariff I. C. C. No. B-1715;

Atchison, Topeka & Santa Fe Railway tariff I. C. C. No. A-8880;

Charleston & Western Carolina Railway Company tariff I. C. C. No. A-708;

Northwestern Pacific Railroad Company, Supplement No. 2 to I. C. C. No. 111;

Seaboard Air Line Railway Company, I. C. C. No. A-6392;

Southern Railway Company tariff I. C. C. No. A-8998;

Sunset Railway Company tariff I. C. C. No. 23; Western Pacific Railroad Company tariff I. C. C. No. 234.

These tariffs, which were filed to become effective on December 1, purport to be in compliance with the Commission's order in case 10173, 58 I. C. C. 568.

## SECOND AMENDMENT TO ORDER 20

*The Traffic World Washington Bureau*

Traffic managers for steel companies, in person and by letters and telegrams, descended on the service bureau of the Commission and the car service division of the American Railway Association on November 13 to protest against the language of the amendment to Service Order No. 20, effective at midnight of November 7, issued for the benefit of shippers of iron and steel, by giving them the use of coal cars having sides 42 inches or less in height. The amendment, effective on the first tick of the clock on November 8, did give the iron and steel shippers more cars, but only about one-fourth as many as supposed.

According to the estimates of the car service bureau people, the amended order added about 25,000 cars to the number they could use in their business.

A few days after the steel men thought they had had an increase of 25,000 cars for their uses, the railroads began taking from them gondolas having flat-bottomed dump doors, which, prior to that time, they had been setting for loading with iron and steel. The railroad officials pointed to the language of the amended order as their excuse for declining to furnish flat-bottom dump cars. The language in the amended order is: "And, provided further that the phrase 'coal cars' as used in this order shall not include or embrace gondola cars with solid (fixed) sides and solid (fixed) flat bottoms having sides 42 inches, or less, in height, etc."

The announcement with regard to the effect of the amended order was that 25,000 cars would be added to the stock available for iron and steel loading. When the traffic managers of iron and steel companies had finished their figuring they came to the conclusion that the net increase in the number of cars available for iron and steel loading would be 6,000, instead of 25,000 as mentioned in the estimate of the car service bureau officials.

It was found that the revised order would be particularly oppressive in the Pittsburgh, Cleveland and Youngstown districts. J. M. Rhodehouse, for the Youngstown Chamber of Commerce and for steel companies whose plants are located in the Mahoning Valley; C. L. Lingo, of the Inland Steel Company, and F. T. Bentley, of the Illinois Steel Company, came to Washington to find out why there had been a change in the definition, and also, if possible, to have the order restored to its original form which was "that the phrase 'coal cars' as used in this order shall not include or embrace flat-bottom gondola cars with sides less than 38 inches in height."

They were not able to discover the reason for the change in the definition as to which nothing had been said by the car service bureau officials when the amended order was given out on November 6. They were led to believe, however, that the revised language was the result of a misapprehension and that it would probably be changed so that only a particular class of dump cars, that the steel industry has been using, would be withdrawn from that trade and devoted exclusively to the hauling of coal.

As a result of these protests the Commission issued a further amendment to Service Order No. 20, effective midnight, November 16, which has the effect of releasing the territory west of the Mississippi River from the use of open-top cars preferentially for the loading of coal and also permits the carriers east of the Mississippi River to use all flat-bottom gondola cars for the loading of commodities generally as well as coal.

The amendment constitutes a substantial modification of Service Order No. 20, which heretofore provided for the reservation of open-top cars for coal use in the territory west of the Mississippi and east of a line substantially following the foothills of the Rocky Mountains.

The amendment with respect to all flat-bottom gondola cars followed the protests of the representatives of steel and iron interests to the effect that the order as amended as of November 8 took from them flat-bottom steel dump cars.

The second amendment to Service Order No. 20 follows:

It is ordered, That the first paragraph of said Service Order No. 20 be, and it is hereby, amended to read:

"It appearing, in the opinion of the Commission, that because of a shortage of open-top equipment which continues to exist upon the lines of each and all the common carriers by railroad subject to the interstate commerce act within the territory east of the Mississippi River, and because of the inability of said common carriers properly and completely to serve the public in the transportation of coal, an emergency exists which requires immediate action."

It is further ordered, That the proviso in said order No. 20, as amended by order entered November 6, 1920, which reads:

"And provided further, That the phrase 'coal cars' as used in this order shall not include or embrace gondola cars with solid (fixed) sides and solid (fixed) flat bottoms, having sides 42 inches or less in height, inside measurement, or cars equipped with racks, or cars which on June 19, 1920, had been definitely retired from service for the transportation of coal and stenciled or tagged for other service."

be, and it is hereby, amended to read:

"And provided further, That the phrase 'coal cars' as used in this order shall not include or embrace flat-bottom gondola cars, or cars equipped with racks, or cars which, on June 19, 1920, had been definitely retired from service for the transportation of coal and stenciled or tagged for other service."

It is further ordered, That this order shall be effective at midnight, November 16, 1920.

And it is further ordered, That copies hereof be served upon the carriers upon whom Service Order No. 20 was served, and that notice hereof be given to the general public by depositing a copy of this order in the office of the secretary of the Commission at Washington, D. C.

## SUSPENDS SWITCHING TARIFFS

*The Traffic World Washington Bureau*

November 15, 1920.

In I. and S. No. 1236, the Commission has suspended until March 15 schedules appearing in the following tariffs:

Chicago, Rock Island & Gulf Railway: Supplement No. 1 to I. C. C. No. 450, effective November 15, 1920.

Fort Worth & Denver City Railway, the Wichita Valley Railway: Supplement No. 1 to I. C. C. No. 352, effective November 15, 1920.

Galveston, Harrisburg & San Antonio Railway Company, Houston East & West Texas Railway Company, Houston & Texas Central Railroad Company, Texas & New Orleans Railroad Company, Houston & Shreveport Railroad Company: I. C. C. No. 1196, effective November 15, 1920.

Gulf, Colorado & Santa Fe Railway: Supplement No. 30 to Santa Fe I. C. C. No. 6472, effective November 15, 1920; Supplement No. 31 to Santa Fe I. C. C. No. 6472, effective November 15, 1920.

International & Great Northern Railway, Jas. A. Baker, Receiver: I. C. C. No. 805, effective November 17, 1920.

St. Louis Southwestern Ry. Co. of Texas: I. C. C. No. 309, effective December 1, 1920.

The Trinity & Brazos Valley Railway, John A. Hulen, Receiver: I. C. C. No. 196, effective November 15, 1920.

The suspended provisions restrict absorptions of switching charges of the Fort Worth Belt Railway by the trunk lines at Fort Worth, Texas, on interstate traffic to certain maximum amounts, resulting in increases varying from 85 cents to $1.35 per car on live stock and 85 cents per car on other traffic.

## COAL PRODUCTION REPORT

*The Traffic World Washington Bureau*

The Car Service Division of the American Railway Association authorizes the following:

"For the first time in a month the railroads, during the first week in November, report a production of less than 12,000,000 tons of bituminous coal, according to data compiled by the Car Service Division of the American Railway Association. This, however, was not due to any shortage in the car supply but to election day on November 2 and the celebration of religious holidays in the coal fields. As a result bituminous coal production for the week which ended on November 6 was estimated at 11,300,000 tons, a decrease of 1,038,000 tons, or 8 per cent below that for the previous week.

"Including railroad fuel coal, 202,564 cars were loaded with bituminous coal during the week, a decrease of 20,453 cars, compared with the previous week. Reports show, however, that except for the first two days of the week, the number of cars loaded daily with coal was greater for the remainder of the week than for the corresponding days of the previous week, when a new record for the year was made and had it not been for the holidays another new record would undoubtedly have resulted."

## SUMMARY OF TRAFFIC

*The Traffic World Washington Bureau*

In a partial advance summary of traffic on Class I steam roads for September, the bureau of statistics of the Commission shows that the reporting roads had 29,483,331,000 net ton miles, as compared with 27,652,863,000 in September, 1919.

Loaded freight car-miles amounted to 1,000,703,236, as against 996,394,283 in September, 1919. Empty freight car-miles amounted to 488,392,843, as against 434,425,647 in September, 1919.

Freight service train-miles aggregated 40,976,618, as against 38,134,043 in September, 1919. Passenger service train-miles amounted to 33,853,762, as against 32,398,472 in September, 1919. The reporting roads operate 179,702 miles of road. Reports from 37 additional roads, operating 51,228 miles of road, are expected.

### BANGOR & AROOSTOOK NOTES

The Bangor & Aroostook Railroad Company has applied to the Commission for authority to issue $320,000 of equipment trust certificates and to issue promissory notes aggregating $180,000 for a loan from the United States. The purpose of the proposed transactions is to finance the purchase of six consolidation type locomotives.

## MEETING OF TRAFFIC LEAGUE

(By a Staff Correspondent at New York)

Aroused by the protest of shippers expressed by the resolution adopted at the meeting in Chicago, October 22, published in the Traffic World of November 13, the committee of traffic executives of eastern territory appeared before the executive committee of the National Industrial Traffic League at its meeting in New York, November 17, in a conciliatory spirit. Archibald Fries, of the B. O., was the chief spokesman for the railroad committee, the members of which expressed themselves as in large part ignorant of the feeling among the shippers and the things that had given rise to such feeling. They expressed more than willingness to listen to reason and proposed a conference with league representatives at which all the carriers of the country should be represented. The executive committee at the league meeting, November 18, made a report of the appearance of the railroad men before it, and on its recommendation the shippers' resolutions of October 22 were not acted on, but the entire matter was referred to a special committee, which will meet with committees of the carriers from eastern, southern and western territories. The league's committee is composed of Messrs. Chandler, French, Giessow, Mowen, Rhodehouse, Belleville, Pawkett, Wilson and Mueller. C. B. Heinemann, chairman of the special committee to which the matter of the car spotting charges proposed by the carriers had been referred, made a voluminous and forceful report, analyzing the proposal of the carriers telling of conferences with the carriers condemning the proposal, and expressing the opinion that the carriers had firmly decided to file the tariffs. The report of the committee was approved and the committee was continued, provision being made for money to enable it to do everything in a fight to the finish. Of course, this is one of the matters that will come before the joint conference to be held with the carriers. A proposal that the railroad rate committees be asked to inform the public as to conclusions reached in matters docketed before them was left in the hands of a special committee, Mr. Lahey, chairman.

The part of the law requiring the Commission to prepare a plan for consolidation of the railroads was discussed and the matter was referred to H. C. Barlow with instructions to keep in touch with the situation.

President Chandler called attention to the status of the proposed increased demurrage charges, which the league, by a close vote, had approved. Mr. Chandler suggested that there was no longer a car shortage reason for such increased charges and he suggested that the demurrage committee of the league be instructed to try to persuade the A. R. A. committee to get authority to join in a request for the suspension of the tariffs carrying the increased charges and that there then be further conferences as to the best course to pursue. His suggestion was adopted.

Mr. Fries and Mr. Quirk, chief examiner of the Commission, were guests and made brief remarks. Mr. Fries expressed high appreciation of the value of the league and his desire for co-operation. He was answered by Mr. Barlow, who pointed out that real co-operation meant that shippers should be informed of the plans of the carriers while they were in a formative state and not merely told of them after the carriers had decided what they were going to do and then asked to co-operate by supporting plans in the making of which they had had no part. His remarks were received with applause, in which Mr. Fries joined.

For the Committee on Diversion and Reconsignment Chairman Rhodehouse reported in favor of action looking toward the application west of the Hudson River of the rules found proper by the Commission in No. 10457, the Boston case, for application east of the Hudson. The one point in that case decided against the shippers he wanted referred to counsel with a view to further action. His report was adopted. His report favoring the publication of diversion and reconsigning rules in agency tariffs rather than by individual lines, was tabled.

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"In the interest, therefore, of tariff simplicity and uniformity, your committee, under instructions from the League at the Louisville meeting, communicated with the lines which refuse to adopt this official list, to learn their reasons for continuing the present practice.

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## SECOND AMENDMENT TO ORDER 20

*The Traffic World Washington Bureau*

Traffic managers for steel companies, in person and by letters and telegrams, descended on the service bureau of the Commission and the car service division of the American Railway Association on November 13 to protest against the language of the amendment to Service Order No. 20, effective at midnight of November 7, issued for the benefit of shippers of iron and steel, by giving them the use of coal cars having sides 42 inches or less in height. The amendment, effective on the first tick of the clock on November 8, did give the iron and steel shippers more cars, but only about one-fourth as many as supposed.

According to the estimates of the car service bureau people, the amended order added about 25,000 cars to the number they could use in their business.

A few days after the steel men thought they had had an increase of 25,000 cars for their uses, the railroads began taking from them gondolas having flat-bottomed dump doors, which, prior to that time, they had been setting for loading with iron and steel. The railroad officials pointed to the language of the amended order as their excuse for declining to furnish flat-bottom dump cars. The language in the amended order is: "And, provided further that the phrase 'coal cars' as used in this order shall not include or embrace gondola cars with solid (fixed) sides and solid (fixed) flat bottoms having sides 42 inches, or less, in height, etc."

The announcement with regard to the effect of the amended order was that 25,000 cars would be added to the stock available for iron and steel loading. When the traffic managers of iron and steel companies had finished their figuring they came to the conclusion that the net increase in the number of cars available for iron and steel loading would be 6,000, instead of 25,000 as mentioned in the estimate of the car service bureau officials.

It was found that the revised order would be particularly oppressive in the Pittsburgh, Cleveland and Youngstown districts. J. M. Rhodehouse, for the Youngstown Chamber of Commerce and for steel companies whose plants are located in the Mahoning Valley; C. L. Lingo, of the Inland Steel Company, and F. T. Bentley, of the Illinois Steel Company, came to Washington to find out why there had been a change in the definition, and also, if possible, to have the order restored to its original form which was "that the phrase 'coal cars' as used in this order shall not include or embrace flat-bottom gondola cars with sides less than 38 inches in height."

They were not able to discover the reason for the change in the definition as to which nothing had been said by the car service bureau officials when the amended order was given out on November 6. They were led to believe, however, that the revised language was the result of a misapprehension and that it would probably be changed so that only a particular class of dump cars, that the steel industry has been using, would be withdrawn from that trade and devoted exclusively to the hauling of coal.

As a result of these protests the Commission issued a further amendment to Service Order No. 20, effective midnight, November 16, which has the effect of releasing the territory west of the Mississippi River from the use of open-top cars preferentially for the loading of coal and also permits the carriers east of the Mississippi River to use all flat-bottom gondola cars for the loading of commodities generally as well as coal.

The amendment constitutes a substantial modification of Service Order No. 20, which heretofore provided for the reservation of open-top cars for coal use in the territory west of the Mississippi and east of a line substantially following the foothills of the Rocky Mountains.

The amendment with respect to all flat-bottom gondola cars followed the protests of the representatives of steel and iron interests to the effect that the order as amended as of November 8 took from them flat-bottom steel dump cars.

The second amendment to Service Order No. 20 follows:

It is ordered, That the first paragraph of said Service Order No. 20 be, and it is hereby, amended to read:

"It appearing, in the opinion of the Commission, that because of a shortage of open-top equipment which continues to exist upon the lines of each and all the common carriers by railroad subject to the interstate commerce act within the territory east of the Mississippi River, and because of the inability of said common carriers properly and completely to serve the public in the transportation of coal, an emergency exists which requires immediate action."

It is further ordered, That the proviso in said order No. 20, as amended by order entered November 6, 1920, which reads:

"And provided further, That the phrase 'coal cars' as used in this order shall not include or embrace gondola cars with solid (fixed) sides and solid (fixed) flat bottoms, having sides 42 inches or less in height, inside measurement, or cars equipped with racks, or cars which on June 19, 1920, had been definitely retired from service for the transportation of coal and stenciled or tagged for other service."

be, and it is hereby, amended to read:

"And provided further, That the phrase 'coal cars' as used in this order shall not include or embrace flat-bottom gondola cars, or cars equipped with racks, or cars which, on June 19, 1920, had been definitely retired from service for the transportation of coal and stenciled or tagged for other service."

It is further ordered, That this order shall be effective at midnight, November 16, 1920.

And it is further ordered, That copies hereof be served upon the carriers upon whom Service Order No. 20 was served, and that notice hereof be given to the general public by depositing a copy of this order in the office of the secretary of the Commission at Washington, D. C.

## SUSPENDS SWITCHING TARIFFS

*The Traffic World Washington Bureau*

November 15, 1920.

In I. and S. No. 1236, the Commission has suspended until March 15 schedules appearing in the following tariffs:

Chicago, Rock Island & Gulf Railway: Supplement No. 1 to I. C. C. No. 450, effective November 15, 1920.

Fort Worth & Denver City Railway, the Wichita Valley Railway: Supplement No. 1 to I. C. C. No. 352, effective November 15, 1920.

Galveston, Harrisburg & San Antonio Railway Company, Houston East & West Texas Railway Company, Houston & Texas Central Railroad Company, Texas & New Orleans Railroad Company, Houston & Shreveport Railroad Company: I. C. C. No. 1196, effective November 15, 1920.

Gulf, Colorado & Santa Fe Railway: Supplement No. 30 to Santa Fe I. C. C. No. 6472, effective November 15, 1920; Supplement No. 31 to Santa Fe I. C. C. No. 6472, effective November 15, 1920.

International & Great Northern Railway, Jas. A. Baker, Receiver: I. C. C. No. 805, effective November 17, 1920.

St. Louis Southwestern Ry. Co. of Texas: I. C. C. No. 309, effective December 1, 1920.

The Trinity & Brazos Valley Railway, John A. Hulen, Receiver: I. C. C. No. 196, effective November 15, 1920.

The suspended provisions restrict absorptions of switching charges of the Fort Worth Belt Railway by the trunk lines at Fort Worth, Texas, on interstate traffic to certain maximum amounts, resulting in increases varying from 85 cents to $1.35 per car on live stock and 85 cents per car on other traffic.

## COAL PRODUCTION REPORT

*The Traffic World Washington Bureau*

The Car Service Division of the American Railway Association authorizes the following:

"For the first time in a month the railroads, during the first week in November, report a production of less than 12,000,000 tons of bituminous coal, according to data compiled by the Car Service Division of the American Railway Association. This, however, was not due to any shortage in the car supply but to election day on November 2 and the celebration of religious holidays in the coal fields. As a result bituminous coal production for the week which ended on November 6 was estimated at 11,300,000 tons, a decrease of 1,038,000 tons, or 8 per cent below that for the previous week.

"Including railroad fuel coal, 202,564 cars were loaded with bituminous coal during the week, a decrease of 20,453 cars, compared with the previous week. Reports show, however, that except for the first two days of the week, the number of cars loaded daily with coal was greater for the remainder of the week than for the corresponding days of the previous week, when a new record for the year was made and had it not been for the holidays another new record would undoubtedly have resulted."

## SUMMARY OF TRAFFIC

*The Traffic World Washington Bureau*

In a partial advance summary of traffic on Class I steam roads for September, the bureau of statistics of the Commission shows that the reporting roads had 29,483,331,000 net ton miles, as compared with 27,652,863,000 in September, 1919.

Loaded freight car-miles amounted to 1,000,703,236, as against 996,394,283 in September, 1919. Empty freight car-miles amounted to 488,392,843, as against 434,425,647 in September, 1919.

Freight service train-miles aggregated 40,976,618, as against 38,134,043 in September, 1919. Passenger service train-miles amounted to 33,853,762, as against 32,398,472 in September, 1919. The reporting roads operate 179,702 miles of road. Reports from 37 additional roads, operating 51,228 miles of road, are expected.

### BANGOR & AROOSTOOK NOTES

The Bangor & Aroostook Railroad Company has applied to the Commission for authority to issue $320,000 of equipment trust certificates and to issue promissory notes aggregating $180,000 for a loan from the United States. The purpose of the proposed transactions is to finance the purchase of six consolidation type locomotives.

## MEETING OF TRAFFIC LEAGUE

(By a Staff Correspondent at New York)

Aroused by the protest of shippers expressed by the resolution adopted at the meeting in Chicago, October 22, published in the Traffic World of November 13, the committee of traffic executives of eastern territory appeared before the executive committee of the National Industrial Traffic League at its meeting in New York, November 17, in a conciliatory spirit. Archibald Fries, of the B. O., was the chief spokesman for the railroad committee, the members of which expressed themselves as in large part ignorant of the feeling among the shippers and the things that had given rise to such feeling. They expressed more than willingness to listen to reason and proposed a conference with league representatives at which all the carriers of the country should be represented. The executive committee at the league meeting, November 18, made a report of the appearance of the railroad men before it, and on its recommendation the shippers' resolutions of October 22 were not acted on, but the entire matter was referred to a special committee, which will meet with committees of the carriers from eastern, southern and western territories. The league's committee is composed of Messrs. Chandler, French, Giessow, Mowen, Rhodehouse, Belleville, Pawkett, Wilson and Mueller. C. B. Heinemann, chairman of the special committee to which the matter of the car spotting charges proposed by the carriers had been referred, made a voluminous and forceful report, analyzing the proposal of the carriers telling of conferences with the carriers condemning the proposal, and expressing the opinion that the carriers had firmly decided to file the tariffs. The report of the committee was approved and the committee was continued, provision being made for money to enable it to do everything in a fight to the finish. Of course, this is one of the matters that will come before the joint conference to be held with the carriers. A proposal that the railroad rate committees be asked to inform the public as to conclusions reached in matters docketed before them was left in the hands of a special committee, Mr. Lahey, chairman.

The part of the law requiring the Commission to prepare a plan for consolidation of the railroads was discussed and the matter was referred to H. C. Barlow with instructions to keep in touch with the situation.

President Chandler called attention to the status of the proposed increased demurrage charges, which the league, by a close vote, had approved. Mr. Chandler suggested that there was no longer a car shortage reason for such increased charges and he suggested that the demurrage committee of the league be instructed to try to persuade the A. R. A. committee to get authority to join in a request for the suspension of the tariffs carrying the increased charges and that there then be further conferences as to the best course to pursue. His suggestion was adopted.

Mr. Fries and Mr. Quirk, chief examiner of the Commission, were guests and made brief remarks. Mr. Fries expressed high appreciation of the value of the league and his desire for cooperation. He was answered by Mr. Barlow, who pointed out that real co-operation meant that shippers should be informed of the plans of the carriers while they were in a formative state and not merely told of them after the carriers had decided what they were going to do and then asked to co-operate by supporting plans in the making of which they had had no part. His remarks were received with applause, in which Mr. Fries joined.

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carrying reference to this Station List. According to Mr. Leland the publication has received the tentative endorsement of the Interstate Commerce Commission and permission secured to make changes therein on short notice in order to keep tariffs corrected by having them carry reference to this issue.

"Aside from these endorsements, Agent Leland calls attention to the fact that information shown in his list is more up-to-date and can be kept so, because the list is supplemented every 15 days and reissued every six months, and that it is impossible for tariffs to be checked up and supplemented promptly enough to give correct information regarding stations.

"Your committee is of the opinion that there is much to be said on both sides. Strictly speaking, we believe it is conceded that it is more advantageous and in the interest of simplification for all information to be shown in the tariff itself, thus obviating the necessity of referring to more than one publication for the information required. On the other hand, we believe it is confusing for some tariffs to show the information and others not to show it. There is no uniformity under the present practice; either all tariffs should be complete in themselves or none of them should refer to the Official List of Open and Prepay Stations. It is our view, however, that the Official List at the present time is the only medium which can give all needed information regarding stations and which can be kept sufficiently up-to-date to meet requirements. Under the tariff rules of the Commission, a tariff cannot be issued, without special permission, under 30 days' notice, and many station changes can occur from the time a tariff is filed until it is distributed and received by shippers. The Official List, on the contrary, by being supplemented every 15 days as well as reissued every six months, meets the requirement of promptness better than could otherwise be obtained.

"We also feel that the Official List of Open and Prepay Stations has a strong argument in favor of its adoption by reason of the many endorsements received from various associations of railroad officers and the Interstate Commerce Commission, as above cited.

"From a careful consideration of all the facts brought out in this matter, it is the view of your committee that for the sake of uniformity and simplicity in tariff publication, either the Official List of Open and Prepay Stations should be made the medium for showing this information throughout the entire country and all lines required to adopt it, or each line should be required to show the information in its tariffs and the Official list discarded entirely by all lines. The present practice of some lines adopting it and others refusing to adopt it is conducive of confusion. Your committee respectfully recommends that the League take action looking to either one alternative or the other.

#### Percentage Increase Applied to Combination Rates Versus Increase Applied to Through Rates Under Ex Parte No. 74

"The matter of what constitutes a joint or single line through rate under the Commission's decision in Ex Parte 74 has been under correspondence with the Commission and we have Director of Traffic Hardie's interpretation, which in all probability will be of interest to League members.

"As a typical case, Director Hardie was asked if the Commission considers the rates from Buffalo to Kansas City, constructed by use of the local rate to St. Louis plus the proportional rate beyond, as a joint or single line through rate, which rate is less than by use of the local rate to St. Louis plus the local rate beyond; or if this would be considered as a combination rate, both factors being subject to the percentage increase applied to the rates in the respective territories.

"Director Hardie states that where rates are published as joint through rates between points in one group and points in another, paragraph 3 of the Commission's decision, under caption of 'Conclusion as to General Increases,' would be applicable. Paragraph 3 reads as follows:

> Joint or single line through rates between points in one group and points in other groups should be increased 33⅓%.

"Commenting further, Mr. Hardie states that class rates from Buffalo, N. Y., on the one hand to points west of the west bank of the Mississippi River on the other, would appear to be properly subject to Paragraph 1 of 'Conclusion as to General Increases,' and such rates should be increased by applying 40 per cent to the factor east of the Mississippi River and 35 per cent to the factor west. Paragraph 1 reads as follows:

> Where rates are constructed by use of combinations upon gateways between any two groups the through rates should be increased by applying to each factor its respective percentage.

"With respect to rates between eastern territory on the one hand and southern territory on the other, Director Hardie states that while it is true that in some cases joint through rates are in effect and in others combinations upon the gateways govern, under the Commission's decision the combination rates would be increased 40 per cent on the northern factor and 25 per cent on the southern factor, whereas the joint through rates would be increased 33 1-3 per cent. While, as Mr. Hardie states, in this particular case no great difference will result from these two methods of increasing the rates, for 33 1-3 per cent applied to the aggregate through rates would not ordinarily make a materially different result than if 40 per cent were applied to the factor north and 25 per cent to the factor south, it is a fact that in other instances the difference would be considerable. In all cases where increases under Ex Parte 74 are applied to rates which result in through rates that appear to be unreasonable or discriminatory, the matter should be taken up with the carriers interested for readjustment, failing in which the matter may be brought before the Commission.

"It will be seen, therefore, that a shipper having the benefit of a through rate which may have been made on a combination will have the advantage over a shipper who may be shipping from and to the same territories where no through rates are established, his shipments being subject to charge on basis of the combination rate, the increase in both factors being based upon the percentage increase applicable to the respective territories. This condition, which is prevalent throughout the country, results in discrimination and report is made to the League for further discussion of the matter and such recommendations as it may desire to make.

#### Reduction Minimum Charge Per Shipment

"Complaint has been received by the committee relative to the long established minimum charge per shipment made by the carriers. It is felt that as the railroads have received a heavy increase in freight rates, this would be an opportune time to approach them for a reduction of their minimum charge. Many firms ship small lots, back orders, etc., weighing from 25 pounds up, charge for which is upon basis of 100 pounds. Suggestion was offered that the carriers reduce the 100-pound minimum to 50 pounds where the freight rate is in excess of $1.00 per 100 pounds.

"The members of the committee have been sounded for their views upon this matter and a majority of replies recevied indicate that the suggestion is looked upon with favor.

"This is a broad question which affects the entire country and before making any recommendations your committee desires expression from the League."

## RAILROAD BOATS ON LAKES

R. M. Field of Peoria, chairman of the committee on inland waterways of the National Industrial Traffic League, in his report submitted at the meeting of the League in New York this week, reproduced the following letter sent to each member of his committee:

"I have sent you with previous correspondence on this subject a copy of Senate Bill S-4254, which provides for an amendment to the Panama Canal act, permitting the railroads to own and operate boats on the Great Lakes.

"This matter was brought up for discussion at the Philadelphia meeting in June, and the League voted in approval of this bill. There was some dissatisfaction on the part of various members and the matter was again brought up at the Louisville meeting, when the subject was again considered and the vote taken was a tie vote 71 to 71, a number of members not voting. It was felt by some that this matter had not been properly presented either to the members of the waterway committee or to the League; that is, arguments in favor of or against the bill had not been registered in full, so as to give the members an opportunity to vote intelligently on the question. I therefore agreed with certain members of the waterways committee, who were opposed to the bill that if they would put their views on paper, I would submit the same to the members of the committee for a further vote and ask the president to have the subject docketed for further consideration at the annual meeting in New York.

"I attach hereto arguments of Mr. Anderson of Chicago and Mr. Keiser of Duluth, which I will ask you to read carefully. While some of us may not altogether agree with their views, this is an important subject and I want it to be presented to our committee and to the League in such a fair and impartial manner as will enable them to record their actual and constructive opinion as to the merits of this proposition."

Following is the statement of G. H. Anderson of Chicago, incorporated in Mr. Field's report:

"In order to properly interpret and understand the meaning of this bill, it is necessary to analyze it with paragraph nine, section five of the "Interstate Commerce Act.' This statute provides:

> From and after the first day of July, 1914, it shall be unlawful for any railroad company or other common carrier subject to the Act to regulate commerce to own, lease, operate, control or have any interest whatsoever (by stock ownership or otherwise, either directly, indirectly, through any holding company or by stockholders or directors in common or in any other manner) in any common carrier by water operated through the Panama Canal or elsewhere with which said railroad or other carrier aforesaid does or may compete for traffic or any vessel carrying freight or passengers upon said water route or elsewhere with which said railroad or other carrier aforesaid does or may compete for traffic; and in case of the violation of

this provision, each day in which such violation continues shall be deemed a separate offense.

"Senate Bill S-4254, if enacted as a law would set aside the above statute which was enacted by Congress and the validity of it was upheld by the Supreme Court of the United States.

"The question naturally arises in my mind, why, if there was fair competition, just division of revenue to private boat operators, no selfish, sinister motives on the part of the railroads, no restraint of trade, was it necessary to enact a law to protect a private boat operator?

"It is also a matter of record and history why lake and river commerce has become practically extinct. I cannot emphasize the strength or importance of this point too vigorously. It is common knowledge to those versed in this question that the railroads are responsible for there being no commerce on the lakes and navigable rivers today for the reason a boat line being subsidiary to a rail line the division of revenue was fixed by the rail line; to make this more clear, when a through shipment by rail and lake, or rail, lake and rail was tendered to a private boat operator at a port and the service of the water line was performed, the rail carrier would not pay it the just division of revenue, saying that it is all we pay our boat line and we will pay you no more.

Another important feature—the railroads who owned boat lines had freight solicitors competing with each other which dwindled to the freight solicitor for the rail line and eventually the tonnage became less on the lake lines and more on the rail lines; this was the purpose originally set out by the rail carriers to do and they accomplished their purpose.

"Further, I refer you to Section 501 of the Transportation Act of 1920, which has to do with the provisions of Section 10 of the act entitled, 'An Act to Supplement Existing Laws Against Unlawful Restraints and Monopolies and for other purposes, approved October 15, 1914, shall become and be effective is hereby deferred and extended to January 1, 1921, provided, that such extension shall not apply in the case of any corporation organized after January 12, 1918.'

"This provision is a relief to Section 10 of the Clayton Anti-Trust Law, but only to January 1, 1921, which, as I look at it, means action on Senate Bill 4254 must be taken prior to that time, otherwise the bill would be in violation to the Clayton Anti-Trust Act.

"In conclusion permit me to say that the organizations now working for the development of waterways have condemned this bill; for the reason that it would stifle the securing of capital for the operation of private boat lines; further, it would have a tendency to spoil a lot of good work already done in the revival of water transportation. New boat lines are being formed and operated and they will put on more boats and take in more ports as soon as the shipping public gives them the proper support and offers them the tonnage.

"The National Industrial Traffic League, being the recognized organization of the shipping public, I sincerely pray that the members will be cautious in their deliberations on the action they take on this, as I believe it will not be in the public interest to have the railways own boat lines."

Following is the statement by F. S. Keiser of Duluth:

"You will probably remember the last action taken at the recent meeting of the National Industrial Traffic League at Louisville, October 1, on the above described measure was to refer it to the Committee on Inland Waterways for further investigation and report. As a member of that committee I have gone into this situation rather exhaustively in order to bring out as clearly and distinctly as possible for the benefit of other members of the committee, who may not be as familiar with the details of lake navigation, the principal reasons why the interests which I have the honor to represent, are so vigorously opposed to any change in the present Panama Canal Act.

"In deciding upon the merits of any question, one should examine precedents and previous experiences, and from a thorough analysis thereof draw his conclusions and pass judgment upon the question before him. Fortunately, in the question involved in this bill, the record is replete and complete, and I feel sure that with a recital of what the Interstate Commerce Commission has found after an exhaustive investigation with respect to railroad operation of lake lines the advocates of a ratification of this measure will at least take the trouble to make a study as we have done, before venturing their support to Senate Bill 4254.

"We have been very careful in quoting references upon this subject and if anyone doubts the veracity of our statements a simple reference to the printed volumes mentioned herein, our statements will be verified.

"Below is quoted a portion of the Panama Canal Act:

From and after the 1st day of July, 1914, it shall be unlawful for any railroad company or other common carrier subject to the Act to regulate commerce to own, lease, operate, control, or have any interest whatsoever (by stock ownership or otherwise, either directly, indirectly, through any holding company, or by stockholders or directors in common, or in any other manner) in any common carrier by water operated through the Panama Canal or elsewhere with which said railroad or other carrier aforesaid does or may compete for traffic or any vessel carrying freight or passengers upon said wate route or elsewhere with which said railroad or other carrier aforesaid does or may compete for traffic; and in case of the violation of this provision each day in which such violation continues shall be deemed a separate offense.

"As a result of this act, the carriers submitted, in December, 1914, requests for permission to continue their operations of lake lines. These applications were handled under Dockets 6381, 6504, 6570, 6573, 6603, 6615, 6616, 6624, 6631. The Interstate Commerce Commission dealt with these applications very exhaustively. They even went so far as to employ a special investigator, one Mr. E. H. Boole. This investigator made a study for months into the records of the carriers, also visiting the various ports served by the lake lines under the railroad control, and his report is a matter of record on file with the Interstate Commerce Commission in Docket 6381 mentioned above.

**"Lake Lines Under Rail Control Formed a Perfect Combine to Prevent Rather Than Give a Free Movement of Lake Traffic—**

"Quoting the Interstate Commerce Commission, 33 I. C. C. 709:

The Lake Lines Association is an "understanding organization," which, while claiming not to be an organized agency, has held meetings, the records of which, as shown in the evidence presented in these cases, indicates that its function is to insure a "proper" management of these lines, from the viewpoint of the railroads, which could not have been possible if their operations were unrestrained. The whole arrangement might be classified as a get together movement.

"Quoting further, 33 I. C. C. 709:

The lake lines in which the petitioners are interested have been shorn of the initial rate-making power. This power has been usurpt by the Trunk Line Association of which the petitioners are members. The through rates controlled by this authority, in which the boat lines are merely concurring carriers, determine for the shipper which lake line must be used. The particular route is controlled by applying arbitrary switching charges at Buffalo, which compel the through lake-and-rail traffic to move via the pre-determined lake line. The zones of territory to be served and those not to be served by the lake lines are also determined by this outside authority, this being accomplished by maintaining a scale of rates, not subject to competition, that forces traffic by either all-rail or lake-and-rail routes, as desired by the Trunk Line Association. The interest and concern of the Trunk Line Association in fixing these different combinations of rates is simply the solidified interest of the several member railroads whose individual interests have been indicated.

"What can be plainer? Here is the greatest judicial body in the United States with one possible exception, making a report as late as 1915 after an exhaustive investigation expressing itself in language impossible of misunderstanding, showing and exposing the most wonderful combination that the railroads have ever perpetuated on a misguided public, and in spite of this, within six years, we find any number of people supporting a bill that simply reverts to the old order of things above expressed by the Interstate Commerce Commission. And why? Simply as far as we can get it to give Lake Michigan (and by Lake Michigan, we do not mean Chicago) a service.

**"Basis of Rates Via Lakes Made a Fictitious Relationship to All Rail Rates as a Result of Rail Control for the Avowed Purpose of Forcing Such Traffic as Was So Desired to the All-Rail Routes—**

"What does the Interstate Commerce Commission say in their report about this situation? Quoting 33 I. C. C. 713-714:

Is the joint operation of these boat lines, such as to make of them an exception? Or, in the words of the Statutes, is the service by water being operated in the interest of the public, and is it of advantage to the convenience and commerce of the people, and will an extension and a continuance thereof exclude, prevent, or reduce competition on the route by water under consideration?

The contentions of petitioners as to responsibility and regularity of this service under joint operation lose weight when it appears that there has been no lowering of the cost of water transportation accompanying them. It appears from correspondence passing between a boat line manager and official of the owning railroad, which forms a part of these records, that this manager attributes the small tonnage hauled by his line, and the consequent small revenues, to the fact that the differential between lake-and-rail rates and the all-rail rates is too small. He urged a larger differential, assuring his superior that such a policy would enable him to profitably operate the boat line.

Instead of lower rates in prospect, it is made to appear that it is only the greater financial strength of the owning railroads that enables the present boats to operate, as it is contended that certain boat lines are being operated at loss. If this be true, then there is no prospect for lower rates under continued joint ownership, and the public is reaping little benefit from this waterway, and the situation is almost the same and will be the same as if no waterway existed. If the people are not to enjoy a low charge for transportation on their waterways, the regularity or responsibility of the service is of questionable merit, since it seems that the shipping public is paying for it, as the rates via water and rail are approximately as high as the rates all rail.

No doubt, under joint operation, certain economics can be effected, but these economics have not manifested themselves in a reduced lake-and-rail transportation cost to the public. Instead of any reduction in lake-and-rail rates they have been steadily advanced under joint ownership. Beginning about 1900, when trunk line control over the lake lines was being perfected, the first-class lake-and-rail rate from New York to Chicago has been advanced by successive increases from 54 cents to 62 cents; the rates on the other classes have been correspondingly advanced. In 1910, according to statements in the records which were not controverted, the trunk line interests agreed that the lake-and-rail rates should actually be advanced to the all-rail basis, and thus wipe out the differential except on first-class

which was to be advanced from 62 to 70 cents. This action was only thwarted by the refusal of a foreign railroad owning a lake line to acquiesce therein. These successive advances, as the records show, have had the effect not only of preventing an increase in lake line tonnage, but in diverting from the lake routes to the all-rail lines, part of the tonnage which formally moved on the lakes. Furthermore, there is much in the records tending to show that the very purpose of these advances in lake-and-rail rates was to divert tonnage to the all-rail lines. As a direct result of this rate policy of the owning railroads, the lake boats have operated with small cargoes, although their operating expenses was almost as great as if they had been fully loaded. This has in turn resulted in a high operating cost to the lake lines per unit of freight. Does not this policy fully explain the lake line deficit? Again, do not such facts make clear that whatever economics might be realized by joint ownership are offset by the waste resulting from the unfair use of vessel tonnage in the interest of the owning railroads? The railroad control of these boat lines cannot be said to be in the public interest when the policy of these railroads has been, by an artificial rate structure to deprive the public of the natural benefits that would flow from a free use of this waterway.

In deciding these cases, the Commission is required to judge as to whether or not these boat lines are being operated in the public interest under joint ownership, and then it must say whether the extension of this operation will result in reducing, preventing, or excluding competition on the route by water.

That the joint ownership and operation of these boat lines has resulted in no real benefit to the people and that the operation is not in the interest of the public or of advantage to the convenience and commerce of the people is established by the facts as above indicated, and a complete monopoly is exercised by the owning railroads over the lake line situation through the medium of the Lake Line Association.

"In view of the foregoing, how can be advocate going back to a situation, such as described by the Interstate Commerce Commission in 1915? Not only have we before us a precedent that should give us in making our decision in this matter, but we have the knowledge that the railroads are using and have used for many number of years, every known device and scheme, and this is not said in a derogatory way, to enhance their own earning power. The rail lines do not lay rail and keep up right of way for the purpose of assisting or abetting in any way the movement of any freight over any line other than a rail line. Naturally, if they can control the rate-making power of the boat line it is a natural sequence of events that they will keep the scale of rates applying via these boat lines just as near to the all-rail rates as possizle. What they did before they will do again, only we have this much to go on, and that is they will do it stronger than they did it before. The policy of combined rates and tariff publishing agencies, tariff deliberating bodies is becoming more and more potent every year. The idea of independent action by any line is almost, if not, a thing of the past. When we know this, how can we advocate the return of the boat lines to a combine dominated wholly and solely by the Eastern Trunk Line Association.

"What did the Interstate Commerce Commission find with respect to competition? There are two phases of this competing situation. First: Did the boat lines, separately operated, compete one against the other? Second: Was it possible for an independently operated boat line to operate in competition with rail-owned lines-

"With respect to the first, quoting 33 I. C. C. 715:

The records here show no instance where the boat lines owned by the different rail carriers have actively competed for traffic with one another or with the paralleling railroads under the regime of joint ownership and operation. Under independent operation each of the lines which is now owned and operated by a railroad, in order to survive, will become a competitor of every other boat line and of every paralleling railroad for all traffic which moves by the great lakes or which might move over that route, and the result of such operation will be reflected in the character of service furnished the public and in the rate charges therefor.

"We submit that this should be conclusive proof as to this feature of competition. Now, what does the Interstate Commerce Commission say with respect to the second feature, namely, the independently operated boat lines?

"Quoting 33 I. C. C. 716:

These boat lines under the control of the petitioning railroads have been first a sword and then a shield. When these roads succeeded in paralleling rails in which they were interested, and later effected their combination through the Lake Line Association, by which they were able to and did drive all independent boats from the through lake-and-rail transportation, they thereby destroyed the possibility of competition with their railroads other than such competition as they were of a mind to permit. Having disposed of real competition via the lakes, these boats are now held as a shield against possible competition of new independents. Since it appears from the records that the railroads are able to operate their boat lines at a loss where there is now no competition from independent lines, it is manifest that they could and would operate at a further loss in a rate war against independents. The large financial resources of the owning railroads make it impossible for an independent to engage in a rate war with a boat line so financed.

"Again we submit that no plainer language could be used.

"The foregoing gives the committee pretty accurate idea of what the Interstate Commerce Commission found when they ordered the divorcement of rail lines from the operation of the boat lines. What has been the situation since the Divorcement Act? The first move was made by Commodore Wm. J. Connors, whereby he secured control of the Mutual Transit Company, the Anchor Line, the Western Transit Company and the Erie Railroad Lake Line, incorporating them under the title of the Great Lakes Transit Corporation. This firm began operations in 1916 and for the first year published rates and maintained service to Lake Superior as well as Lake Michigan ports. In 1917 they discontinued their service to Lake Michigan ports on the ground that the cost of operation in and out of Chicago and Milwaukee was such as to make the business at those ports unattractive. Since 1917 they have operated on Lake Superior only.

"The service afforded in the past four or five years by the Great Lakes Transit Corporation has been excellent. There has been better than daily service between Buffalo and Duluth for the last five years and we understand that during the year that boats were operated in Chicago, that there were no complaints on that service. The schedule time between Duluth and Buffalo is 72 hours. There has been absolutely no complaint to be had either on the freight or passenger service afforded by the Great Lakes Transit Corporation.

"A review of the financial showing of the Great Lakes Transit Corporation since 1916 should be very gratifying to the stockholders of that line, and substantiates literally the prophecy of the Commission made in 1915. This company started with an investment in 1916 of $5,735,249. They issued 27,500 shares of preferred stock, par value $100. They issued 100,000 shares of common stock without nominal or par value. They floated a bonded debt of $3,390,000. In 1919 we find that the original investment has been reduced to $4,458,000. We find the stocks the same as in 1916. We find that the bonded debt has been reduced from $3,390,000 to $1,000,000. We find the purchase of Liberty Bonds to the extent of $553,244.94, and in addition to this we find that in 1916 dividends of $494,375 were paid. In 1917, $917,500 were paid. In 1918, $892,500 were paid, In 1919, $842,500 were paid, or an average dividend of approximately $800,000 annually. When it is realized that there were only 27,500 shares of stock with any value and further that if there was one share of common stock given with the purchase of one share of preferred stock, and, further, that there were 62,500 shares of common stock floating, pure and simple water, on which dividends have been paid as if they had nominal value, one can appreciate the enormity of the earnings of this boat line. The annual net income for each year of the operation of this corporation has been over a million dollars. This, on an average investment of less than five million dollars. This shows pretty conclusively that from a financial standpoint a boat line most assuredly is self-sustainent without the support of the rail lines.

"This is the really deplorable situation that has developed since the Divorcement Act. It cannot be said to be the result of the Divorcement Act because that is not the fact. It is a deplorable feature that Chicago and Milwaukee today are without a boat line. Part of this is attributable to the fact that both Chicago and Milwaukee have very bad terminal facilities. By this we mean it is expensive operation getting a boat out of either Chicago or Milwaukee terminal. There are harassing delays, such as the use of tugs, turn bridges and lift bridges. As a matter of fact, Chicago has twenty-one bridges before the delivery of package freight can be made. But even with these disadvantages, there is no reason why, with the lake rates as they are today, that an independent boat line operating to Chicago and Milwaukee could not operate successfully from a financial standpoint, and there is no question but what if the present law is allowed to stand, that the next year or so will find the privately owned boat lines operating to and from Chicago and Milwaukee. There is also no question but what there will be another boat line operating to and from Duluth in competition with the Great Lakes Transit Corporation. It is a foregone conclusion that when the earnings of this company become a matter of public knowledge, unquestionably other private capital will immediately interest itself in a boat line. As a matter of fact, we know of private capital at the present time that is investigating the question of instituting service not only to Duluth in competition with the Great Lakes Transit Corporation, but to Chicago and Milwaukee as well. The only reason why there has not been a competing boat line already operating on the Great Lakes in competition with the Great Lakes Transit Corporation is on account of the war. You will remember that the United States entered the war in 1917, and no one at that time or any time since has been foolish enough to entertain any new projects. Neither will anyone be foolish enough to entertain the thought of new boat lines either to Chicago or Duluth if there is any change made to the present Panama Canal Act. Railroad control on the Great Lakes absolutely means the death of private operations. There are many things about the operation of a boat line by the present owners of the Great Lakes Transit Corporation that do not meet with the approval of the interests we represent. We do not think that they take the long vision in the operation of their boat line. We think unquestionably that the discontinuance of their operations to Chicago was a big mistake. We also think that their present method of constructing freight rates is a still bigger mistake, but these mistakes of this boat line pale to utter insignificance when one considers the mistake that the National Industrial Traffic League would make in advocating the resumption of the most perfect combine that was ever perpetrated on the American public. These mistakes of the Great Lakes Transit Corporation are not beyond repair. There is no question but that Chicago and Milwaukee would petition the

Shiping Board and Interstate Commerce Commission jointly, that they could force the Great Lakes Transit Corporation to make Chicago and Milwaukee ports of call. The same can be said of the freight rates now existing to Duluth as published by this company. Whenever the time is ripe we can complain to the Interstate Commerce Commission and knock the bottom out of the freight rates that are now existing to and from Duluth. As a matter of fact, we have not attacked these rates due to the psychology of the time and further due to the fact that we have knowledge of private capital that is interesting itself in the question of operating a competition boat line and when its investigations are complete, and service is established, then the rate situation will take care of itself as a result of competition.

"We have gone into this situation with a good deal of detail. We have shown you the reasons why the Interstate Commerce Commission divorced the railroads from the control of the lake lines, and have proved it by citations as to its findings of facts. We have shown you the financial situation of the boat lines under private control. We have told you of the service furnished by boat lines under private control and we have told you of the prospects of new boat lines. In conclusion we want to plead with you not to adocate any change in the present Panama Canal Act. Most assuredly the National Industrial Traffic League as a national organization cannot afford to advocate any legislation that will tend to monopolize lake transportation and force, as a result of that monopoly, any private capital from investing in this service. Our whole pleadings have not been from a selfish standpoint, for which we were very unjustly accused at a recent Philadelphia meeting. We stand perfectly willing today to join with Chicago and Milwaukee, to force a service into those ports via the lakes. Our whole idea in the presentation of this question is the free and unhampered use of the lakes for every community located on their banks, as well as every community located in close proximity to the banks of these lakes. We are not trying to withhold service, we are trying to extend service and the only way that lake service will ever reach that efficiency which we all want; the only way that communities throughout this country will be given full benefit of their proximity to the banks of the Great Lakes is by the complete divorcement of any rail control from the boat lines and the free and unhampered action of private capital. The law as it stands today is a 100 per cent law and most assuredly we cannot afford at this time to advocate legislation such as is proposed by Senate Bill 4254, when by that advocation we simply revert to the old condition of things, which was so rotten as not to be a matter of discussion.

"In view of the foregoing, we earnestly request your support toward the defeat of this measure when it comes up for further discussion at New York at the annual meeting of the National Industrial Traffic League."

## THE NEW ERA OF TRANSPORTATION

(Address before the annual meeting of the National Industrial Traffic League at New York, November 18th, by Lewis J. Spence, director of traffic of the Southern Pacific Company.)

I am deeply sensible of the honor conferred upon me by your invitation to be a guest of the National Industrial Traffic League this evening, but am persuaded to address you only by the assurance that I am in the house of my friends.

The first chapter of the railroad history of this nation began with the period of initial development, when every section of the country clamored for railroads, without questioning the terms upon which they could be obtained or the rates that would be charged for their service, and when every inducement and encouragement to invest in capital in railroad enterprise was offered by the state and national governments; it ended when the anxiety for railroad facilities had been sufficiently satisfied to become outweighted by a greater interest in the cost of transportation, and a determination to eradicate the evils of exploitation and discrimination which had grown up, and to be superseded by a new conception of the obligations of common carriers and the regulation to which they should be subjected.

The second chapter is a record of restrictive legislation which was primarily designed to correct and prevent the evils which had come into existence, but which in its subsequent development and administration became so punitive and repressive as to discourage enterprise; repel the investment of capital, and retard railroad expansion.

The third chapter records the seizure of the railroads for the avowed purpose of facilitating participation in the World War, and the history of their operation by the Government, which is fresh in your memories.

In an address delivered to the Traffic Club of New York, after the armistice, two years ago, it was my privilege to draw attention to the pursuits of peace by classifying the future operation of our transportation systems as one of the most important problems of reconstruction. My interpretation of public sentiment was that any benefits which had accrued during federal control were entirely outweighted by the handicaps attributable to the elimination of competition; that the paramount desire of the public was a restoration of the benefits of reasonable competition in rates and service; the recognition of the shipper's right to route his freight; the revival of the courtesy and accommodation which are born of individual initiative and competitive endeavor; and an impartial consideration of rates by the Interstate Commerce Commission, which would be fair alike to shippers and carriers. It was pointed out that the elimination of competition had been the avowed policy of the director general of railroads, and was inherent in Government ownership or any other form of unified control and operation which had ever been proposed. My hearers were reminded of the significance of the seizure of the ocean cables after an armistice had been concluded and were warned against the propaganda which had already begun in favor of continuing Governmental control of the railroads after the accomplishment of the avowed purpose for which they were taken over. The question was asked why should Governmental operation be continued for twenty-one months after the proclamation of peace, or, for any longer period of time than necessary to restore the railroads to individual management in an orderly way. It was asserted that the longer the transportation lines were continued under unified control and operation, the more completely their individualities would be obliterated, their organizations disrupted, and their credit impaired. The view was, therefore, expressed that if unified control was not to be prolonged for exploitation by the advocates of Government ownership, the situation required prompt, concerted and vigorous action by the public, and the people were urged to awaken to their responsibility with the assurance that both the President and the Congress would respond to an unmistakable expression of public sentiment. The necessity was also urged of such comprehensive legislation as would assure the future development of the railroads as useful instrumentalities of commerce, and the suggestion made that such legislation should provide a tribunal to deal with wages, hours, and working conditions of employes, and contain a mandate to the Interstate Commerce Commission to readjust rates contemporaneously with readjustments of wages.

Whether this call to arms had any influence upon subsequent developments is not material. The National Industrial Traffic League promptly inaugurated an intelligent and forceful campaign for the early relinquishment of the railroads by the Government, and the enactment of adequate legislation for their future protection and operation. In this campaign you were joined by the Traffic Club of New York and the other traffic clubs of the country, as well as by substantially all of the commercial organizations of the country, and it never relaxed until the requisite legislation had been enacted by Congress and the railroads had been returned to private management.

When the railroads were returned, their credit was impaired; their net earnings barely more than sufficient to pay their operating expenses and wholly insufficient to meet their fixed charges; their organizations had been disrupted; their equipment was scattered throughout the country, and was badly in need of repair; their traffic was congested; their service was indifferent, and the efficiency of labor had been reduced to a minimum.

These were the prevailing conditions when the enactment of the Transportation Act of 1920 brought us to the fourth chapter of our railroad history, which is "The New Era of Transportation." Upon its threshold stood the members of the Interstate Commerce Commission, facing a new and constructive railroad policy, which, as stated by Commissioner McChord from the bench in the recent rate case, had revolutionized regulatory legislation affecting the railroad industry by recognizing the paramount interest of the public to be the provision of adequate transportation. Beside them stood the railroad officers, looking into the future with hope, confidence and courage; and beside them stood the users of the railroads in confident expectation of the benefits to accure to the commerce of the country. It was clear that all were facing in the same direction—mutually appreciating that the paramount purpose of the law could be accomplished only by the cooperation of all the parties.

The restoration of railroad credit by the enactment of the Transportation Act and the pursuit of a more reasonable and enlightened policy of regulation must be accepted as putting the chief responsibility upon the carriers to accomplish the results which the new national policy was designed to achieve.

### What Return to Private Management Has Accomplished

Therefore, it is timely to answer the query to what extent have the carriers met their responsibility and the shippers realized their expectations?

First: The benefits of competition in rates and service have been restored; your right to route your freight is again respected; individual initiative, courtesy and accommodation have been revived; provision has been made for adjustment of wages and labor disputes which discourages future strikes without preventing them, by making them unnecessary; and an impartial consideration of rate, fair alike to shippers and carriers, is again assured.

Second: Realizing that the business of the country could not wait for the delivery of new power and equipment and the expansion of facilities, the railroads undertook to substantially

increase the efficiency of the existing plant and the result may be briefly stated in this way:

(a) On the first of March there were 8,404 unserviceable freight locomotives, which represented 28.3 per cent of the total number owned, while there are now only 6118 locomotives unserviceable, which represents but 17.8 per cent of the total number owned.

(b) In February of this year each freight car was moved a daily average of 27.4 miles—an increase in efficiency of 23 per cent.

(c) In February of this year the average load per car was 28.3 tons, while in August the average load per car was 29.8 tons—an increase in efficiency of 5 per cent.

These increases in efficiency had the effect of adding more than 600,000 cars to the available equipment of the country, so that in August of this year more freight was handled by the railroads than in any previous August in our history of transportation; and you have observed the recent public statement of Interstate Commerce Commissioner Aitchison that the back-bone of the car shortage has been broken.

Third: During the first six months of private management the restoration and maintenance of existing equipment has cost $792,000,000, and during the same period $569,000,000 were expended for maintenance of way and structures, or, in other words, for putting the physical property in condition to perform more efficient freight and passenger service.

Fourth: On the first of January, 1920, locomotive builders had on their books orders for 99 locomotives. Notwithstanding the extraordinary prices which have prevailed, and notwithstanding that the cost of borrowing money has substantially exceeded the maximum rate of return allowed the railroads by the provisions of the Transportation Act, the American and Canadian railroads together have since, ordered 1,770 locomotives at a cost of $106,000,000; they have ordered 73,593 freight cars, at a cost of $221,000,000; and they have ordered 997 passenger cars at a cost of $23,000,000—making an aggregate expenditure for power and equipment of $350,000,000.

Fifth: After the railroads had been taken over by the Government, but were still being operated by their former officers as agents of the Government, some of the railroad executives initiated a movement to abolish off-line traffic agencies, in the belief that their continuance would not be countenanced by the Government under a unified system of operation. It was my privilege to establish the contention that no such action was required by the proclamation of the President or by any orders which had been issued or expressions which had been made up to that time by the director general of railroads, and to sustain this contention by announcing the purpose of the Southern Pacific Lines to continue all of such agencies. Later, when the operation of the railroads had been taken out of the hands of their officers, and the abolishment of off-line agencies was taken up for consideration by the Railroad Administration, every influence at my command was exerted to prevent the step being taken, believing not only that it would be a grave injustice to the men composing these organizations, many of whom had spent their whole business lives in the service, but that the shippers would be deprived of one of their most useful mediums of daily intercourse with the carriers and would be seriously inconvenienced. Persuasion and argument availed nothing, and I have always believed that the removal of these cushions between the railroads and their patrons was one of the most serious and far-reaching mistakes of judgment and political expediency made by the Railroad Administration. Therefore, some lines even anticipated the return of the railroads on March 1 by re-organizing their off-line traffic agencies to be ready to function on that date; others re-organized their forces during the next six months, and still others after the expiration of the guaranty period, so that the recruited forces now in the field have restored to their patrons a convenient medium of intercourse and accommodation.

Sixth: Freight train schedules have been materially improved and are better maintained.

Seventh: Daily merchandise cars have been extensively reestablished.

Eighth: Systematic passing reports to shippers are being rapidly restored.

Ninth: Passenger train service will soon be as satisfactory to the public as it was prior to federal control.

Tenth: Re-organization of the tariff bureaus and creation of necessary export rate committees and the administrative committees to deal with readjustments and meet the current traffic problems of shippers and carriers have been accomplished. Besides the passenger organizations, which it is unnecessary to enumerate, we now have in the West the Transcontinental Freight Bureau, the Southwestern Freight Bureau, The Western Trunk Line Freight Bureau and the Western Classification Committee; in the South the Southern Freight Rate Committee and the Southern Classification Committee; and in the East the Trunk Line Committee, the Central Freight Committee, the New England Committee, and the Official Classification Committee—which embrace standing rate committees, composed of experts who have no connection with individual lines, thereby assuring every rate proposition receiving the benefit of expert analysis and unbiased judgment, which ought to be of incalculable benefit to the shippers of the country as a whole.

In addition to these there are two national committees—one being the Consolidated Classification Committee, composed of members of the three territorial classification committees, who are charged with the responsibility of ultimately unifying the classifications; the other the National Perishable Freight Committee, composed of men who have been trained in the protection of perishable freight from the elements, and a chairman, whose exclusive time is to be devoted to the perfection and coordination of rates, rules and practices affecting perishable freight, and the consideration of every proposition submitted by shippers in connection therewith.

The standing rate committees are not clothed with any power to make rates; it is their duty to give every proposition the benefit of expert analysis and make their recommendations to the traffic officers of individual lines to guide them in their conclusions, so that the organizations are thus safeguarded from the dangers of bureaucracy, and the full right of individual action is reserved to every line.

Recognizing the necessity of coordinating the activities of these organizations and of dealing with interterritorial and nationwide traffic propositions and principles which affect the entire country, traffic executive committees have been created in each of the three territorial subdivisions of the country—the Eastern Committee with Mr. George H. Ingalls as Chairman; the Southern Committee with Mr. Lincoln Green as Chairman; and the Western Committee with your humble servant as Chairman. In turn, an executive committee of the Consolidated Classification Committee is composed of five delegates each from these three traffic executive committees; and the National Perishable Freight Committee is under the administrative direction of a committee consisting of the chairmen of the Eastern, Southern and Western Executive Committees.

These organizations, we believe, provide the most competent, convenient and expeditious machinery that can be created to deal with the traffic problems of shippers and carriers.

### Public Opinion Vindicated.

Gentlemen, if there has been any failure to thus far accomplish anything which should have been accomplished since the return of the railroads to their owners, I am not here to excuse it by asserting that more might have been accomplished if shippers had utilized equipment more economically or efficiently. I am here to remind you that the railroads were relinquished by the Government in deference to a crystalized public opinion that, with their credit rehabilitated and fostered, and confidence restored, adequate and satisfactory service would be best assured under private management. I am here to claim that public opinion has been already vindicated by the progress—the substantial progress—that the railroads have made under private management in spite of their difficulties, and I am here to concede that these results could not have been obtained without the cordial cooperation of the shippers and especially of this organization.

### National Industrial Traffic League

The transportation question has become a national question. The National Industrial Traffic League is a national organization. It may have been primarily created for the protection of its members in their relations with the carriers, but if there are any railroad executives or traffic officers who have failed to realize its usefulness, not only as a medium of intercourse for the carriers with the shippers, but as an invaluable agency of assistance to the carriers, they should stop and take their bearings. As a member of the executive traffic committee which met with your committees during the progress of the recent rate case, I can testify to a breadth of view and a spirit of cooperation on your part which every skeptical railroad officer should have witnessed. Therefore, it is a great pleasure to me to be the direct point of contact between your organization and the transportation systems of the country long enough to publicly and gratefully acknowledge the invaluable service which you have rendered to the railroads in crystalizing public sentiment against the perpetuation of Governmental operation; in the passage by Congress of the most constructive transportation legislation that has ever been enacted; and in giving your affirmative support to the applications of the carriers for the increased revenue contemplated by the Transportation Act.

### The Future

Now, what of the future? The mental attitude of railroad officers today was well expressed by one of our late railroad wizards when he said that while he always endeavored to avoid being dissatisfied with results that had been accomplished he never permitted himself to be satisfied. There is much to be accomplished by the railroads, and no organization of men is better qualified than the National Industrial Traffic League to set up the sign posts of public opinion to guide us on our way.

While the new conception of regulation as expressed by the Transportation Act has recognized adequate transportation facili-

ties and service as the paramount necessities of the public, I am sure that the verdict of shippers in favor of private management was partly inspired by the expectation that a more business-like adjustment of rates would be promoted by private management under the inspiration of individual initiative and self-interest on the part of the several carriers and their daily contact with an intimate knowledge of commercial and industrial conditions in their respective territories.

The shippers undoubtedly realized that under the private management the carriers would adjust their rates to meet the necessities of commerce, while under any system of unified Governmental operation the commerce of the country would have to accommodate itself to inflexible rates adjusted solely to meet revenue requirements.

While the discretion of the carriers must be exercised within the limitations of the law, every carrier is interested in stimulating the traffic of the section which it can most advantageously serve, and nearly every commodity rate is initiated by some interested line even if it becomes effective by every available route and has the appearance of concerted action. You and I are too close to the subject to subscribe to the statement frequently made that there is no longer any competition of rates.

The traffic machinery which I have described, while subjecting rate adjustments to expert examination to avoid destructive rates or wasteful transportation—which in the last analysis becomes an unwarranted burden upon the public at large—is designed to preserve all of the benefits of individual initiative and competition among carriers.

I think that the National Industrial Traffic League should have been formally notified of the completion of our rate making machinery and supervisory traffic organizations in order that such questions might have been brought directly to these organizations as are contained in a resolution adopted at a meeting of Western commercial organizations and shippers and receivers of freight in Chicago, October 22nd, and recently published in the Traffic World, to be recommended for adoption by the National Industrial Traffic League at its annual meeting, but which in the meantime has been transmitted to the Association of Railway Executives. Whether your organization has adopted or endorsed this resolution, I am not aware, but inasmuch as it has come before you it seems appropriate for me to briefly answer it in this way:

First: The part taken by the shippers in advocating important and essential provisions of the Transportation Act, and of the National Industrial Traffic League in supporting the recent application of the carriers before the Interstate Commerce Commission, are not unappreciated. I have publicly acknowledged them with an expression of gratitude.

Second: It is recognized that the recent horizontal increase was supported by many shippers and granted by the Commission with the understanding that such readjustments as the facts might warrant would be promptly undertaken and, as far as possible, made without appeal to the Interstate Commerce Commission.

Third: It is assumed that the dissatisfaction expressed by this resolution does not apply to legitimate efforts to obtain increased revenue where it can be shown that the revenue accruing to any group of lines under the rates authorized in Ex Parte 74 is insufficient to yield the result contemplated by the Transportation Act, and that it is realized that the rate readjustments to which preferred attention is advocated cannot all be made by reductions without impairing the aggregate revenue which the authorized rates were designed to yield, but that the complaint is directed against efforts to "put over" change after change in individual rates, rules and practices which are designed solely to secure further and unauthorized increases of rates instead of proceeding with the readjustments contemplated by the carriers in their application and by the Commission in its decision. I have no knowledge of any such preconceived or concerted efforts, and if they are made at this time I consider it the duty of executive traffic officers to suppress them.

Fourth: Stated in another and more direct way, the carriers should give immediate and preferred attention to the readjustments contemplated by their application and the Commission's decision.

Fifth: So much of the resolution as protests against a continuance of the general revision of consolidated classification has been anticipated by the executive committee of the Consolidated Classification Committee, which has adopted the policy that no action be taken at this time as to items in Appendix 6 as a whole; that the Consolidated Classification Committee shall proceed to handle in the regular way applications from shippers including such other items as may be affected by changes resulting from conferences with the shippers; and that beyond this scope no further changes shall be made by the Consolidated Classification Committee without definite approval of a plan of procedure by the executive committee.

Before becoming impatient with any delay that may ensue in the readjustments that are expected to follow the horizontal increase of rates, permit me to urge due consideration of the fact that the carriers must proceed in a prudent, business-like way, that will commend itself to the Interstate Commerce Commission which must now share the responsibility of preserving sufficient revenue to provide adequate transportation, as contemplated by the law. When you are reminded that it is yet difficult to forecast the effect upon net revenues which the Commission, under the Transportation Act, has undertaken to provide, and that readjustments involve a multitude of problems, affected by conflicting influences and conflicting forces, of which mature study is necessary, many of you gentlemen are sufficiently experienced to realize the practical obstacles that are encountered from day to day. However, it is not intended to excuse any unnecessary delay which may ensue, and you may repose confidence in the traffic officers of the railroads doing everything that is consistent and practicable to expedite equipment readjustments, for I recognize that these readjustments are entitled to preferred consideration by our rate committees and our traffic organizations.

### Cooperation Between Shippers and Carriers

The cooperation that has been established between the National Industrial Traffic League and the carriers must not be, and shall not be, interrupted by any effort of railroad officers to shirk the responsibility that is now imposed upon them or by any failure to be guided by considerations of public policy. In dealing with the daily traffic problems that come before them, railroad officers must realize that there are conditions under which changes may be inopportune that might be unobjectionable at some other time; that they must avoid relatively unimportant but very irritating changes of existing practices, and that they must give more thought to considerations of public policy. On the other hand, it should not be assumed that railroad officers are doing nothing of this kind, as many of you know that we are preventing changes of this character when they are brought to our attention, and those of you who do know should not hesitate to inform your associates in your councils, so that an unfair or biased conclusion may not be reached.

Conscientious and competent railroad officers are stimulated by the initiative that is permissible under private management and are deeply concerned with the estimation in which they are held by the public. They realize that public opinion will hold them accountable for the fidelity and efficiency with which their duties are performed, and that railroad policy must, therefore, be subjected to the test of public approval. Therefore, they cannot overestimate the importance of a constant study and supervision of every point of contact between the carrier and its patrons whether it be the politeness and attention of an individual employee; the considerate handling and prompt payment of a just claim; the furnishing of a car with the promptness required to meet the shipper's needs; or the correction of an inequality, injustice or discrimination in rate adjustment. Inevitable failures to fully meet your expectations will not be due to a lack of effort on our part, and you may be assured that each discovered imperfection will stimulate us to increased endeavor toward continuous and progressive improvement.

It seems to me that the relations between the National Industrial Traffic League and the railroad officers should be conducted in a more direct and intimate way. If it be found that equipment is not being released by shippers as promptly as it might be, or that cars are not being loaded as fully as they might be, a direct or implied criticism from the housetops should not be necessary, as the shippers fully realize that their own interest in conserving the supply of equipment is really paramount, and the National Industrial Traffic League will be a ready and useful medium through which the facts may be conveyed to shippers, if brought to you in a more direct and intimate way.

Likewise, the responsible traffic officers of the railroads and the traffic executive committees which have been created will always welcome a direct expression from the National Industrial Traffic League with respect to any general policies that are being pursued or that may be under consideration, and they will do well to seek the counsel of such a representative organization.

The National Industrial Traffic League and the railroad officers of the country must not drift apart. Never has there been so much in common between the railroads and the users of the railroads, and their mutual cooperation is indispensable. If you will undertake on your part to perpetuate and strengthen this cooperation, I pledge you my support of your effort.

## WOULD RETAIN EXCESS EARNINGS

The Arkansas Railroad, of Star City, Ark., owning 17.8 miles of railroad between Gould and Star City, Ark., has applied to the Commission for a certificate of public convenience and necessity authorizing it to operate the railroad and also for permission to retain excess earnings over 6 per cent on the value of the property. The continued operation of the road is essential to the proper development of the territory which it serves, the applicant states. The request for permission to retain excess earnings above 6 per cent is made under the rate-making section of the transportation act which provides that the Commission may permit a carrier undertaking the construction and operation of a new line of road to retain all or any part of the earnings from the operation of the new road for a period not exceeding ten years.

# FREIGHT CLAIM PREVENTION

(Address of R. H. Aishton, president of the American Railway Association, to the Freight Claim Prevention Congress)

Mr. Chairman and Gentlemen of the Freight Claim Prevention Congress: I am not pulling these papers out to read them to you. I came down here this morning wholly unprepared to deliver an address. I didn't know that I was to make an address to this "Congress" until I noticed it in the papers yesterday afternoon and I want to tell you right now, as I have said repeatedly, I never deliver an address. I came down here to give you a little talk as to things as I see them. You don't need me here. This is your show. I didn't get up this show. I didn't call this "Congress." Your Freight Claim Prevention Committee called it. Your General Committee and your Committee on Cause and Prevention came to me and asked me for $10,000—wasn't it, Mr. Fairbanks?

Mr. Fairbanks: $20,000.

Mr. Aishton: No, you are wrong, it was $10,000, and then they took it all back and wanted $20,000. They said if we would give them $20,000—now, I am telling you what your committee said, because you can hold them responsible if they don't reduce these loss and damage claims—the responsibility is going to be on you, as I told your committees. They said that "if you will give us that $20,000, we know how to prevent this loss and damage; we will put in an organization here that will reduce them from $104,000,000 a year to $60,000,000 a year and possibly more." Now, that's my only connection with this job. I got the $20,000. I met with your committee, talked with them, outlined a few suggestions, not as a guide, just simply a suggestion, of things as I saw them and they called this "Congress" and that's the reason you are all here.

I want to say to you, gentlemen, as president of the American Railway Association temporarily, that I am mighty proud indeed to see a division of the Association that will get together a gathering like this to take up a subject of this kind, and to gather from all over the United States and Canada in this city of Chicago, where, if you believe the press, you are liable to be held up and get in all kinds of trouble if you go outside of the hotel. Now, what can I say to you? I don't know much about Cause and Prevention. I do know that this matter of the growth of claims has reached rather serious proportions. I am not going to pull a lot of statistics on you, but I have here some figures that were published in the Railway Age a couple of weeks ago that might very well go into your records here and which should receive the most careful consideration of all of you gentlemen. Briefly, what the figures show—and I have checked up these statistics and, as usual, the Railway Age is dead right on them—in the year 1914, there were $32,376,000 paid out by railroads for loss and damage; in 1917, three years later, there were $35,000,000 paid out for loss and damage with a very slight increase in the number of tons handled, but with practically the same freight earnings in 1918—that was the first year of government control of railroads, and while that possibly may not be responsible for this large amount, it is rather significant—the freight handled was about the same as that of 1917, but the payments for loss and damage to freight jumped up to $55,000,000—an increase of 58 per cent over 1917 and 71 per cent over 1914. But, continuing further, when you come to 1919, "she sure jumped." The freight movement was less in 1919 than in 1918 and less than it was in 1917, yet the freight loss and damage payments increased in that year to $104,244,000, and that's the reason you are here. That's the reason your committee itself got alarmed about this thing. That's the reason they said that it is time that they took hold of this thing and did somehing. That's the reason the Railway Executives and the Executive Committee got behind this movement. Those figures are so big that when I get to talking in millions I "kinder" get lost. I like to get down to cents—how many cents on the dollar? These figures appeal to me. Take out of every dollar the railroads receive for freight—in other words, their earnings for handling freight, for the year 1914 they paid back to the shipper for loss and damage to freight 1.63 cents, and in 1919 out of every dollar that was taken in—and a depreciated dollar at that—there were 3.67 cents paid back to the shipper. Now, the shipper didn't want to sell these goods to you. That's the last thing in the world he wanted to do. The shipper is not interested in selling goods to the railroads except the very few that are used on the dining cars or in railroad operations. They are not interested in selling kitchen ranges to railroads or live stock or anything of that kind, but what he is interested in is getting his freight moved expeditiously and as economically as possible and in as first-class condition as possible from the point delivered to destination. That's the shipper's interest in the whole thing. He doesn't want a lot of claims. What he wants is the elimination of the causes that give rise to freight claims. I haven't yet heard Harry Barlow. I understand he will be here today and will address you gentlemen, but I can predict what he will say. It will be along the lines of what I have just said, so far as shippers' interests are concerned. Another thing, after a legitimate claim has been presented, he wants you to remove as much red tape as possible, and pay him as promptly as possible. When you do that, you will have every shipper in the country on your side and he will help you in every way possible. I will say to you gentlemen, that we hear a great deal of new eras and new epochs. There is no new era or new epoch. The world is going to move on along common sense lines and all these matters are going to be adjusted along common sense lines. We are not going to have any revolutionary methods or anything like that. Now, gentlemen, coming back to the reason for the calling of this "Congress," I am going to say to you just what I said to your committee, and what I find to be true as I go along in this work regardless of whether it is demurrage, freight claims, freight rates or the hundred and one other things. While you are doing this work, take the shipper into your confidence, call him into your meetings—call him into your committee meetings and consult with him about anything that affects him, let him have full knowledge of what you are doing and anything that affects shippers in particular, and a great many things will affect the shipper in particular; let him know what you are doing, take him into your confidence and reach an agreement with him if you can before action is taken, and if you will do that, you will find the shipper will come three-fourths of the way across, because he is as much interested as you are in the elimination of freight claims. He does not want to sell his goods to the railroads; he wants to eliminate the disheartened customer who fails to receive his goods and the loss of business consequent to that, but more than all, the shipper is vitally interested in freight rates, and you take the duty of the Interstate Commerce Commission is to fix certain net earnings in certain territories and among certain groups of railroads. In fixing these earnings of operating expenses among them, this loss and damage enters into that computation, and therefore shippers are just as much interested, if not more interested, than the railroads are in the elimination of all the expense we may call useless and avoidable. So, just keep that in your mind and also keep in mind this, that the government of the United States, by the Transportation Act, today is responsible for the revenues of these railroads, and being responsible for the revenues, they are also going to be very much more inquisitive as to the expenses that enter into this, because if they have to provide the means, it is reasonable to assume that they are going to be quite inquisitive as to the various disbursements made by the railroads.

One of the thoughts that struck me when your committee put this proposition up to me was that the railroads—the great transportation interests in this country, are tremendously interested in seeing that their actions are governed by the very best approved recommended practice of practical men who are in the business, like you are, because if they don't and a question arises in Congress possibly or arises with the Interstate Commerce Commission as to why this increase in claims, what are you going to say? You can say prices of commodities have increased—well, they have increased, but they are coming down now and when you take this figure I quoted of 3.67 cents coming out of every dollar earned from the transportation of freight, the freight rates have also been boosted, which indicates that there is more than double the actual loss and damage to commodities transported by railroads, regardless of value or anything of that kind than occurred six years ago, it is alarming. Why? That's the question that will be asked some day. It may not be asked this year, but it will be asked some day, and I think you ought to be in position to absolutely state that this great economic waste has been appreciably decreased and that every reasonable preventive measure has been applied and challenge any criticism along that line. Above all, I am going to say this—Harry Barlow has just come into the room and I want him to hear it—I want to emphasize what he is going to say to you. In every step you take where shippers' interests are concerned, make them partners with you, take them into your committee's confidence, tell them what you are doing and I guarantee you that you will get more suggestions, or as many suggestions, as to methods and ways of developing this as any you will yourself offer.

One other thing I want to refer to. I was just reading last evening the report of the Transportation Division of the American Railway Association, which will be presented to the meeting Wednesday. I noticed this in it, and it refers to the work of the Committee on Service Efficiency. I don't want anybody to have any fear that they are crossing wires or treading on anybody's toes by any work you can do. I said to your committee that it was your job to develop these causes and suggest means for this prevention. I will just read this report as showing what they have already done. "During the calendar year 1919 payments for loss and damage to freight by railroads throughout the coutnry amounted to over $104,000,000. Owing to the increase in contributing causes and the greatly increased value of all commodities, the committee feels that this waste can only be reduced by a combined effort of all the departments." I won't read it any further. That covers the point I thought of. There is no department of a railroad that can be efficient unless it has the absolute and full co-operation of every other department on that railroad and I want to just leave this word with you in this development of cause and prevention. If there is anything the Transportation Department ought to handle and can handle

that will be helpful to you in your work I would suggest that you call them in to confer with you. They have a very effective committee in their Committee on Service Efficiency, and if you will call them into your conferences—tell them what you are figuring on—get the benefit of their advice, and more than all that, get their help in pushing forward what you propose doing, and when you have done that you will accomplish great good in this cause and prevention work. Another thing, there may be some mechanical questions involved, such as preparation of equipment, etc. I know they enter very largely into this loss and damage account. We have an organization in the American Railway Association who can handle that and can give you expert advice and who can guide and consult with you in the handling of any matters that affect the condition of equipment; more than that, if you get all of these various departments interested in this work, you will get a wave of sentiment among the railroads and their employes that will make a success of this thing. I leave that with you. Let me tell you another thing just as a word of advice and then I am going to quit. You folks will doubtless fight among yourselves, no doubt there will be differences of opinion, and if there were not differences of opinion the meetting would not be worth while, and could accomplish little result in the end. You will get, finally, something concrete out of this meeting today and when you have agreed upon anything it means that the representatives of some one hundred and eighty to two hundred railroads have agreed to that thing and there are one hundred and eighty to two hundred executives of railroads back home who won't know a thing about what you are doing unless you tell them. When you finally go out of this meeting my suggestion is that you take the executive of your particular railroad into your confidence, tell him what you are doing, tell him what you expect to do and tell him why you are doing it and get his interest aroused, and in that way you will get help that will mean something to you and in the end you will accomplish something. Now, as I said when I started, I am just an invited guest here. This is not my job at all, it is your job. You originated it. It is your "baby" and it is up to you to provide proper food and treatment for it, and I know you will do it, for you have never yet undertaken anything in this Freight Claim Division that you have not carried through. I want to say this to you, that I am your hired man, Mr. Fairbanks is your hired man, and we will help you in any way we can. We are not going to "butt" into your affairs, but when you need us, we want you to feel free in calling upon us. I want to warn you against setting up an administrative organization for your purposes, and I want to emphasize under no conditions should you branch out into that kind of thing, because what you have got to do is to get the judgment of the shippers on the one hand, the support and sympathetic interest of your own individual managing officials and executives on the other hand, and if you get that the success with which you meet will depend entirely upon yourself.

## McCAULL-DINSMORE DECISION

*The Traffic World Washington Bureau*

In correspondence between Jacobs, Malcolm & Burtt of San Francisco and the American Railway Express Company the question has arisen as to whether the express company has the right to demand that the firm reduce its loss and damage claims by 10 per cent on the assumption that if, in making claim for loss, included in the money demanded ten per cent commission which it did not earn by selling the goods lost or damaged.

The correspondence between the agents of the company and Jacobs, Malcolm & Burtt has brought into question the proper interpretation of the two Cummins amendments. It also seems to proceed on the assumption on the part of the express company agents that the Commission gave the express company authority to offer alternate rates on fresh fruits and vegetables, the general class of commodities involved in the loss and damage claims under discussion. The accuracy of that assumption is denied by the fruit and vegetable firm.

In a letter to the express company dated July 15, the fruit firm said that "on our claims last season, as requested by you, we discounted 10 per cent anticipated commission charges from the amounts of our claims, which amounts reflected the market value of the various shipments on which claims were filed. As you are no doubt well aware, the Supreme Court of the United States has recently ruled in connection with the McCaull-Dinsmore case that the actual loss to the consignee should be computed on the basis of the value of the goods at destination in good order at the time they should have been delivered. This, of course, removes the application of any wording of the shipping receipt as to the value at time and place of shipment, which basis you have used on previous claims and which you arrived at by deducting the commission charges.

"Irrespective of the basis on which we are handling express shipments, either consignments or purchase, all of our claims will be hence forth on the basis of the market value at destination upon delivery or upon the date on which shipment should have been delivered, whichever may govern the specific cases."

In answer to this letter, signed for Jacobs, Malcolm & Burtt by H. A. Bishop, traffic manager, W. W. Argabrite, claim agent of the express company, on October 22 said:

"You recently advised us that in view of the ruling in the McCaull-Dinsmore case you would file your claims on destination value, but would not reduce them by commission.

"We have referred this matter to our legal department, who state the ruling in the above case was rendered on the basis of the Cummins amendment effective during the year 1915. However, this clause was subsequently canceled by an order of the Interstate Commerce Commission permitting the carrier to incorporate in the express receipt and classification, clauses limiting liability, hence case in question could have no bearing on our liability on commission claims. It will therefore be necessary for you to file your claims on the basis of net remittance to the shipper before further action can be taken on them."

The argument between the express company and Jacobs, Malcolm & Burrt came to what the diplomats would call an impasse on November 6, when Mr. Bihsop sent the following to J. W. Westlake, general superintendent of the express company:

"Your attention is directed to letter written by your attorney, Mr. Alfred Sutro, dated September 14, addressed to W. E. Carpenter, superintendent of claims, American Railway Express Company, under the above caption (criterion of value of lost or destroyed goods).

"This letter has been quoted to us by the American Railway Express Company as being in answer to our letter of July 15, citing the decision of the United States Supreme Court in the McCaull-Dinsmore case as authority for the basing upon market value at destination, of all claims filed upon shipments consigned to us as commission merchants.

"Mr. Sutro has stated that the ruling in the above case was rendered on the basis of the Cummins amendment, effective during the year 1915, and that as the second Cummins amendment, effective August 9, 1916, permitted the carrier to incorporate in its official express receipt and classification clauses limiting its liability, the decisoon of the court would have no bearing upon shipments moving subsequent to the second Cummins amendment. This is correct to a certain extent. The second Cummins amendment provided that the provisions thereof respecting liability for full actual loss, damage, or injury, notwithstanding any limitations of liability, should not apply to property received for transportation concerning which the carriers had been authorized by the I. C. C. to establish rates dependent upon the value declared in writing by the shippers or agreed in writing as released value of property, in which case said declaration shall have no other effect than to limit liability and recovery to an amount not exceeding the value so declared.

"This paragraph was the only relief given carriers from the rigid construction of the first Cummins amendment and it applies only to article shipped upon a released or declared valuation concerning which the carriers have established rates dependent upon the value, such as the shipment of household goods by freight where the shipper in order to secure a lower rate declares the value in writing at time of shipment not to exceed $10 per cwt.

"On shipments of fresh fruits and vegetables to market there are no alternate rates upon a lower or a higher value declared at time of shipment. Therefore, the application of the second Cummins amendment in no way can affect the ruling of the court in so far as it applies to our shipments. The measure of carriers' liability under the law and as set forth in the above decision is the market value at destination, which is the basis upon which we have filed all of the claims in dispute. But, aside from the legal standpoint, it must certainly be admitted that the basis on which we are filing the claims is a reasonable and just one. Most of these claims amount to from $1.50 to $2. By forcing us to deduct the anticipated commission you will, if successful, gain from 15 cents to 20 cents on each claim, which is our only compensation for handling and which by no means covers the overhead cost involved. In practically every case the cost of stamps alone is equal to the amount of our commission, not to mention the cost of stenographic and clerical work necessary in assembling documents for claim.

"We trust that this matter will be given further consideration and that the American Railway Express Company will adjust these claims in line with their moral and legal liability."

It is Mr. Bishop's idea that the express company is endeavoring to defeat the ruling of the courts in the McCaull-Dinsmore case by insisting that the fruit company shall deduct from its claims 10 per cent, which it assumes the fruit company added to the amount it intends to remit to the producer of the goods sent to it on consignment for sale on a commission basis. His further idea is that if that is done, the express company will have defeated the ruling in the McCaull-Dinsmore case, the effect of which is that settlement must be made on the basis of the market value at destination, and bring back into play the basis of invoice value, or value at time and place of shipment.

While the position of the express company is not clearly shown by the correspondence, it appears to be that the fruit company is not entitled to inflate the claim by including therein the profit it would have made had the goods seasonably arrived in good condition, the fruit company's commission of 10 per

cent on what it sells being regarded as profit. It is a general rule that the claim against a carrier may not include profits that might have been acquired had the goods arrived in due time and in good condition, but may include only the price or value at which the goods were selling in the market to the one whose goods were lost or damaged by the carrier.

What constitutes value or market value is something on which few men agree. The subject, it is believed, causes more white paper and time to be used than any other phase of the relations between shipper and carrier. That is believed to be the result of the inability of the shipper and carrier to see clearly that each case must be decided on the facts applicable to it, and that the hardest work is to establish the facts.

In the case of cotton, grain and live stock, it is believed, the value at destination can be easily ascertained if there is agreement as to when the shipment or shipments should have arrived. Markets for such commodities are highly organized. The intelligent interior shipper, by reading the market reports in the newspapers can tell within a fratcion of a cent what he will receive for such of his goods as may have arrived on a given day. He takes the quotation for the day and subtracts the freight, insurance and any other expenses he knows his goods had to bear in transit, and the expenses of selling at the destination.

In that way he ascertains the value at destination so far as he, the seller, is concerned. All the allegations of fact, in the event the case goes to court, must be properly supported. While the rule was to settle on value at time and place of shipment, the highest Maryland court approved a method for ascertaining value at time and place of shipment in the case of a suit to recover because a consignment of strawberries did not arrive on time in the New York market and the failure to arrive on time was not beyond the power of the carrier to prevent. In that case, the price for which the berries would have been sold had they seasonably arrived was used as the base. From that base the court subtracted the cost of getting the berries to market, and said that the remainder was the value at time and place of shipment. The case went to the Supreme Court of the United States and that court did not find judicial error warranting reversal.

Many of those who have discussed the question of loss and damage think that the old rule of settlement on invoice or value at time and place of shipment, applied as the Maryland court applied it, would be as good a way out of the morass of uncertainty about loss and damage claims as could be devised. There are some who think it was a mistake for Congress to make a change in the method of settling loss and damage claims, because the method used by the Maryland court, it is believed, would have been a definite and certain way in cases of goods moving to markets so well organized that quotations are published every day, and a good way also for settling on goods as to which there is no such carefully and completely organized market. That is to say, in the case of the loss of a box of carpenter's hammers, the invoice price would show the value at time and place of shipment, if it were a bona fide sale shipment, and the value at destination would be the bona fide invoice price plus the cost of getting the quantity in question to the destination in due time. Such a method, it is felt, would be a good one, regardless of whether the market went up or down between the time of shipment and the time when the goods should have arrived.

It is contended that if a carrier or a shipper insisted upon settlements which took into account fluctuations in the market, then the element of prospective profit could not be kept out. In some cases the method would be good for the shipper and in others for the carrier.

This brief review of a few of the contentions on the subject, it is believed, will show the difficulty of reaching a conclusion as to whether the express company is or is not trying to defeat the ruling in the McCaull-Dinsmore case.

## COMMENDS THE COMMISSION

A. U. Tadlock, traffic manager of the Jonesboro (Ark.) Chamber of Commerce, has written the following letter to the Interstate Commerce Commission:

"Your announcement of October 29, stating your position with respect to the various and numerous fourth section departures extant today without specific authorization on your part in each case, and also your position in the matter of reissuing various tariffs so as to bring within them the increases authorized in Ex Parte No. 74, has just been received.

"Our shippers and receivers of freight welcome the position you have taken in both matters and are appreciative of it. You well know why. I believe that like interests, the country over, will receive this announcement with the same welcome that our people have and will appreciate equally as much your attitude.

"Could not let this announcement pass into our files without letting you know the feeling of our people concerning it."

## INTERPRETATION OF TARIFFS

(Twenty-fourth of a series of articles written for The Traffic World by R. R. Lethem.)

In this article an endeavor will be made to define the various kinds of switching services performed by common carriers and to explain the principles governing the use of tariffs publishing switching charges, also provisions with respect to the absorption of switching charges of one carrier by another carrier or carriers.

To begin with, switching services and charges therefor may be divided into intrastate and interstate. Intrastate switching rates apply only on shipments originating at and destined to points within a certain state, moving wholly within that state, while interstate switching rates are applicable in connection with interstate shipments, i. e., on traffic originating at or destined to points outside of a certain state, and traffic originating at or destined to points within a certain state, but moving outside of that state in transit.

Prior to the general increase in rates under Ex Parte Docket 74, effective on or about August 26, 1920, while switching rates on both intrastate and interstate traffic were not uniform throughout the United States, there was not tne diversity in the charges that there is at the present time, owing to the failure of a number of the state commissions to grant the increases authorized by the Interstate Commerce Commission under Ex parte No. 74.

Next, we have what is known as road-haul switching service, namely, switching performed by a carrier in making delivery to or in forwarding shipments from industries located on its industry tracks or to and from team tracks on its line; between the interchange tracks of its connections and industries on its line, or intermediate switching between two lines. So-called interchange switching is the initial or final movement of a car upon the terminal tracks of one railroad in aid of the road-haul movement over another railroad.

We also have intra-plant switching, intra-terminal switching and inter-terminal switching.

Intra-plant switching is a switching movement from one track to another within the same plant or industry.

Intra-terminal switching is a switching movement (other than intra-plant switching) from one track to another of the same road within the switching limits of one station or industrial switching district.

Inter-terminal switching is a switching movement from a track of one road to the track of another road when both tracks are within the switching limits of the same station or industrial switching district.

Intermediate switching, another form of switching, is switching service performed at a point by a carrier between its interchange connection with two or more lines having no interchange connection, such, as for instance, the service performed by the St. L.-S. F. R. R. at Joplin, Mo., between the connection of the St. L.-S. F. R. R. with the Mo. Pac. R. R. and the connection of the St. L.-S. F. R. R. with the A. T. & S. F. Ry., K. C. S. Ry., M. & N. A. R. R. and M. K. & T. Ry., the Mo. Pac. R. R. having no direct connection at that point with those lines and therefore being unable to make delivery to or receive from such lines cars destined to or forwarded from industries located on those lines at that point, except through the St. L.-S. F. R. R.

Another form of switching is that known as "trap-car" or "ferry-car" service, the two names covering the same service. The term is applied to a car placed at an industry or commercial house having a private siding, and there loaded by a shipper with less-than-carload shipments, and hauled by a carrier to its local freight or transfer station for handling and forwarding of contents, and also is applied to a car loaded with less-than-carload shipments which is hauled to and placed upon the private tracks of an industry or commercial house by the carrier from a local freight or transfer station. Where such cars are loaded to a prescribed minimum, the practice is to make no charge for the service. However, in accordance with Conference Ruling No. 97 of the Interstate Commerce Commission, there must be tariff authority for this practice.

Under the heading of miscellaneous switching rates, it is also the practice of many carriers to provide for switching rates for the movement of all freight or a particular commodity from a certain station to a near-by station or between the two points or from or to an industry located adjacent to a certain station.

Prior to the general increase in rates under General Order No. 28 of the United States Railroad Administration, while there were in certain instances differences in the switching rates charged for service in connection with line hauls, namely, switching performed by a carrier between the interchange tracks of its connections and industries on its line or intermediate switching between two lines, and the charges for intra-plant, intra-terminal and inter-terminal switching services, at the present time the charge for a switching service in connection with a line haul is lower than the charge for intra-plant, intra-terminal and inter-terminal switching, due to the fact that no advance was made in the switching charges for services in connection with line hauls under General Order No. 28.

Less-than-carload freight, except when moving in trap or ferry cars, is received and delivered by a carrier at its freight station. Delivery or receipt of carload freight, however, is made as a general rule, either on the team track of a carrier or on the private sidetrack or industry track of the industries served by the carrier. No charge, of course, is made for the placing of cars, where the carrier receives the road haul, either for loading or unloading, on a team track, but there is no legal obligation to spot cars at designated points on team tracks, although as a matter of convenience to shippers and receivers of freight, this is often done, nor, as an almost universal rule, is a charge made for placing cars on the private sidetrack or industry track of an industry served by the carrier, the line-haul rate including the movement of a car and the spotting of same upon an industry track at a convenient point for loading or unloading. The line-haul rate, however, covers only one placement of the car for loading or unloading, and an additional charge should be made for each additional placement of the car for that purpose.

A carrier, being under a legal obligation to effect delivery of shipments upon private or industry tracks without additional charge, has the option of either performing the service with its own power or of employing an agent to render the service for it. In the event it chooses to employ an agent to perform this service, the agent so employed is entitled to an allowance, which is just and reasonable for the service performed and the Interstate Commerce Commission has in a number of cases authorized or required carriers, in order to remove unjust discrimination, to make an allowance to industries which will cover the cost of the service performed by such plant facilities. The making of this allowance is subject to the qualification that the nature of the industry is such as to permit of the performance of that service by the carrier, if it should choose to perform the service itself and not make an allowance to the industry; that the carrier has been requested to perform the spotting service; that the industry has signified its willingness to permit the carrier to perform the service with its equipment and that the service is such that the carrier could be required to perform.

In the event the service is performed by a common carrier industrial line, such a line is entitled to participate in joint rates with and receive divisions or absorptions of switching charges from its trunk line connections. The trunk lines are not obliged to absorb the switching charges of common carrier industrial lines, but the Commission may, however, require carriers to remove unjust discrimination occasioned by the absorption of switching charges in certain instances and not in others, under like circumstances and conditions, and may also, where the facts justify such a course, require trunk lines to establish joint rates with connecting industrial lines lower than the combination on the junction point of the trunk line and the industrial line and may fix the divisions to be accorded the industrial line. All allowances, however, must be fixed and specifically provided for by appropriate tariffs.

In the absence of tariff provisions to the contrary, the line-haul rate of a particular carrier includes the receipt or delivery of carload freight only at industries or other points located upon its own rails. However, in order to secure a share of the traffic moving to and from industries located on the rails of other lines, the various carriers provide in their terminal or switching tariffs for the absorption of all or a part of the switching charges of such lines, i. e., the switching charge applicable from the connection of their lines with such lines to and from the industries located thereon, including the charges of intermediate carriers over which such shipments must move in order to reach the rails of the carriers on which such industries are located.

It is the general practice, however, of railroads throughout the country to absorb switching charges of connecting lines at points of origin or destination only on competitive traffic; that is, on shipments originating at or destined to competitive points.

The effect of a switching absorption is the establishment of a joint rate, the cancellation of an absorption being the withdrawal of a joint rate, leaving effective the higher aggregate of intermediate rates.

In many instances the absorption of a switching charge on traffic to or from competitive points and not to or from non-competitive points results in total transportation charges to or from a more distant point which are less than the total transportation charges to or from an intermediate point, and the result is a fourth section violation. The Commission has, however, owing to the general practice of absorbing switching charges from competitive and not from non-competitive stations, and in view of the fact that much benefit and little complaint results, by Fourth Section Order No. 5 of March 20, 1911, permitted the continuance of this practice.

The Commission, however, in its opinion in the case of the Richmond Chamber of Commerce vs. S. A. L. Ry. et al., 44 I. C. C. 455, which ruling has just been sustained by the Supreme Court of the United States in its decision of November 8, 1920, in the case of the Seaboard Air Line Co. et al. vs. the United States of America, the Interstate Commerce Commission and the Richmond Chamber of Commerce, held that the practice of certain southern lines of absorbing switching charges only when the switching line actually competes with the line-haul carrier on traffic to or from a certain point is unlawful.

Under the provisions of section 6 of the interstate commerce act all terminal privileges and facilities extended to shippers must be specifically authorized by tariffs and cannot be inferred. Rule 10 of Tariff Circular 18-A requires that if the charges of a switching or terminal road are to be absorbed by a connecting line the tariff of the connecting line must specifically state that its rate includes such terminal service and that the connecting road will absorb such charge of the switching road as is published and filed with the Interstate Commerce Commission. This rule further provides that if the switching road's charges are to be added to the charges of a connecting road the tariff of such connecting road must clearly state that the shipments are subject to the switching charges named in tariffs on file with the Commission.

The matter is generally taken care of by placing in the tariff of the connecting road naming the line-haul rate a clause, known as an omnibus clause, which provides in general that shipments transported under that tariff, in addition to the rates and rules shown therein, are entitled to such privileges and subject to such charges as are covered by publications of that railroad and participating carriers, relating to absorptions, switching, terminal service and transfer. In appropriate switching or terminal charges tariffs filed with the Interstate Commerce Commission the switching charges which are to be added to the line-haul rate or are to be absorbed by the line-haul carrier or carriers are published, and likewise provisions which state what charges, and in what amount, will be absorbed by the road-haul carriers.

There is a difference between team tracks and industrial tracks. The latter are for the handling of carload freight to and from plants located thereon, the cost of construction being borne in part by the owners of the plants, and carload freight is switched to and from the plants irrespective of whether the carriers performing the switching service participated in the line haul or not. Shippers, however, have no part in the construction or maintenance of team tracks. They are analogous to freight depots in that they bear the same relation to carload freight that such depots bear to less-than-carload freight, and carriers, as a general rule, will perform switching service to or from their team tracks only when they receive a road haul into or out of the station at which the team track is located. The carriers have been sustained in this position by the Commission, except where unjust discrimination results therefrom.

There is an exception, however, to the rule that carriers will not make team track delivery of cars reaching a station over another line, and this is under what is known as a reciprocal switching movement. A reciprocal switching arrangement is one under which all carload freight, both competitive and non-competitive, is switched between all lines serving a certain point, at uniform switching charges; that is, any railroad will accept from a connection in that point carload freight to be delivered upon private sidings upon its own line or upon its own team tracks, and conversely it will move cars from its own private sidings and team tracks in that city for shipment to any destination. For these services a switching charge is imposed, which, as a rule, has been absorbed by the carrier enjoying the line haul, provided the total revenue from the shipment exceeds a certain amount. These switching services may be of three kinds—the car may be transported by the switching road from a junction with one line to a junction with a second line, this being known as an intermediate switch, the switching line having nothing to do with the delivery of the car; the car may be moved between a private siding upon the switching road and the junction with a connecting line or the movement may be between the team track of the switching road and the junction with the connecting line. Under reciprocal switching arrangements all railroads entering a city are placed in competition for the business of every shipper, and this affords the best possible service to the public. Such an arrangement is in effect at Chicago, Ill., St. Louis, Mo., and many other large cities.

In order to illustrate the use of switching tariffs and to differentiate the various forms of switching we will assume the movement of various shipments under different circumstances.

First, let us suppose that a shipment of coal is made from Hackett, Ark., to Tulsa, Okla., via the St. L.-S. F. R. R. consigned to a firm located on an industry track of the Midland Valley R. R. Upon arrival of the car at Tulsa, Okla., it will be turned over to the Midland Valley R. R. for switch movement to the industry in question. The Midland Valley R. R., not having received the road haul on the car, will demand its switching charge for the movement from its interchange connection with the St. L.-S. F. R. R. to the industry. However, inasmuch as the shipment could have moved via the Midland Valley R. R. from Hackett, Ark., to Tulsa, Okla., both points being located on its line, and the line-haul rate would include delivery at the plant of the industry in question, the St. L.-

S. F. R. R., in order to compete on equal terms with the Midland Valley R. R. for this traffic, has provided in its switching tariff that it will absorb the switching charge of the Midland Valley R. R., and therefore the shipper will not be assessed with the Midland Valley R. R. switching charge.

The provisions of the St. L.-S. F. R. R. with respect to the absorption of the switching charges of the Midland Valley R. R. at Tulsa, Okla., are contained in item 110-A of Supplement No. 11 to St. L.-S. F. R. R. Tariff No. 1069-K, I. C. C. No. 7506, which provides that that line will absorb the switching charges of connecting lines lawfully on file with the Interstate Commerce Commission on competitive traffic, except where otherwise specifically provided, competitive traffic being defined in item 35 of that issue as traffic moving between competitive points, and competitive points being defined as points to and from which equal rates are in effect via the St. L.-S. F. R. R. and other lines.

The absorption of any switching charges by the St. L.-S. F. R. R. is, in accordance with item 40 of St. L.-S. F. R. R. Tariff No. 1069-K, I. C. C. No. 7506, contingent, however, upon the revenue accruing to the St. L.-S. F. R. R. for the movement of the shipment not being less than $10, after the deduction of switching charges at points of origin and destination, except as otherwise specifically provided in that tariff.

Likewise, had the shipment been consigned to an industry on the St. L.-S. F. R. R. and moved over the Midland Valley R. R., the Midland Valley R. R. would have, under its tariff provisions, absorbed the switching charge of the St. L.-S. F. R. R.

The switching movement of the Midland Valley R. R. and the St. L.-S. F. R. R. is a road-haul switching service, and the absorption by either of those lines of the charges for such switching movement is in line with the general practice of the carriers of absorbing switching charges on competitive traffic.

Had the shipment originated at a local point on the St. L.-S. F. R. R. the switching charge of the Midland Valley R. R. would not be collected from the consignee, in addition to the line-haul rate, inasmuch as item 815 of St. L.-S. F. R. R. Tariff No. 1069-K, I. C. C. No. 7506, provides that coal, among some thirteen commodities, will be considered competitive traffic at destination when originating at local as well as competitive points. However, had the shipment consisted of, say, grain, the switching charges of the Midland Valley R. R. would be in addition to the line-haul rate. This switching charge of the Midland Valley R. R. is $5 per car, in accordance with Midland Valley R. R. Tariff No. 534-G, I. C. C. No. 375.

Next, let us suppose that the shipment in question had moved from Hackett, Ark., to Tulsa, Okla., via the Midland Valley R. R. consigned to a firm having no industry track, but being conveniently located with respect to a team track of the St. L.-S. F. R. R., but not with respect to the team track of the Midland Valley R. R. Notwithstanding this fact, the St. L.-S. F. R. R. would refuse to switch the car to its team track, under the provisions of its switching tariff to the effect that it will not deliver to its team tracks cars which move into Tulsa over other lines, and, therefore, delivery of the car must be accepted on the team track of the Midland Valley R. R. and the freight drayed to the place of business of the firm in question. This is in accordance with item 75 of St. L.-S. F. R. R. Tariff No. 1069-K, I. C. C. No. 7506.

Now, let us assume that we are making a shipment of cement from Baltimore, Md., to Portsmouth, Va., moving via the B. & O. R. R., Wilmington, Del., P. R. R., Delmar, Del., and N. Y. P. & N. R. R., consigned to a firm located on an industry track of the Seaboard Air Line Ry. By referring to B. & O. Tariff I. C. C. 16877, we find that the rate on cement between points in question is 14 cents per 100 pounds, minimum 50,000 pounds. In view of the fact that the shipment is not to be delivered at an industry on the N. Y. P. & N. R. R., at Portsmouth, it will be necessary for us to examine the switching and absorption tariffs of the interetsed carriers applicable at Portsmouth.

We find that the N. Y. P. & N. R. R., in its tariff, I. C. C. 3294, covering switching absorptions at Portsmouth, Va., provides for the absorption of the total switching charges of the N. & P. Belt Line R. R., and the S. A. L. Ry., when the total charges do not exceed $8.50 per car, and when the charges do exceed $8.50 per car, the excess amount will be in addition to the freight rate. The N. Y. P. & N. R. R. and the S. A. L. Ry. have no direct track connection at Portsmouth, the interchange being made through the N. & P. B. L. R. R. By referring to N. & P. B. L. R. R., I. C. C. 52, it is noted that a charge of $4 per car is made for switching cars between its interchange tracks with the N. Y. P. & N. R. R. and the interchange tracks of the S. A. L. Ry., and in S. A. L. Ry., I. C. C. A-4806 we find that the switching charge from interchange point between the N. & P. B. L. R. R. and the S. A. L. Ry., to certain private and assigned sidings, is $4 per car, and to certain other sidings $5.50 per car. If our industry is located on a siding to which the switching charge is $4 per car, the total switching charge from the N. Y. P. & N. R. R. to our industry will be $8 per car, while if our industry is located on a siding to which the switching charge is $5.50 per car, the total will be $9.50 per car. In view of the fact that the N. Y. P. & N R. R. will absorb the total switching charge provided it does not exceed $8.50 per car, the total charges on our shipment will be based on the straight rate of 14 cents per 100 pounds, if our industry is located on a siding to which the $4 switching rate of the S. A. L. Ry. applies, while, if our industry is locted on a siding to which the $5.50 switching rate applies, we will be obliged to pay the difference between $8.50 and the total switching charge of $9.50, i. e., $1, in addition to the freight charge of 14 cents per 100 pounds.

Assuming that a carload shipment of sand moved from Sumpter, Kan., a local point on the Midland Valley R. R., on October 15, 1920, to an industry having an industry track connection with the St. L.-S. F. R. R. at Tulsa, Okla. This movement not being competitive traffic, the switching charge of the St. L.-S. F. R. R., namely, $5 per car, as published on page 5 of Supplement No. 9 to St. L.-S. F. R. R. tariff No. 1069-K, I. C. C. No. 7506, would not be absorbed by the Midland Valley R. R., item 210 of Midland Valley R. R. Local Freight Tariff No. 534-G, I. C. C. No. 375, providing for the absorption of connecting lines' switching charges on competitive traffic only, as defined in item 205 thereof, except as to certain commodities named in items 220 to 285, inclusive.

Had the shipment moved from Jenks, Okla., a local point on the Midland Valley R. R., to Muskogee, Okla., on October 15, 1920, for delivery at an industry located on the St. L.-S. F. R. R., at that point, the charge would be that named in item 55 of St. L.-S. F. R. R. tariff No. 218-E, for the distance the shipment is moved by the St. L.-S. F. R. R. in making delivery to such industry, inasmuch as, in accordance with item 50 of St. L.-S. F. R. R. tariff No. 1069-K, I. C. C. No. 7506, the switching charges named therein are not to be applied on Oklahoma state traffic, i. e., traffic having origin, destination and entire transportation within one state.

In accordance with item 25 of St. L.-S. F. R. R. tariff No. 1069-K, I. C. C. No. 7506, the switching charge will cover the handling of cars loaded in one direction and empty in the other direction between points provided for. If cars are loaded in both directions, regular charges will be made for each loaded movement. If cars are empty in both directions they will be charged for the same as if they were loaded in one direction.

Assuming that we are located at Tulsa, Okla., on an industry track of the St. L.-S. F. R. R., and that we desire to make a carload shipment of gasoline to Excelsior, Ark., a local point on the Midland Valley R. R. We order a car from the Midland Valley R. R. for the movement of this shipment. Inasmuch as the shipment is destined to a local point on the Midland Valley R. R., the switching charge of the St. L.-S. F. R. R., namely, $5, it will be absorbed by the Midland Valley R. R., but will be in addition to the line-haul rate. This switching charge, however, will, in accordance with item 25 of St. L.-S. F. R. R. tariff No. 1069-K, I. C. C. No. 7506, referred to above, include the movement of the empty car to our siding and the movement of the loaded car to the connection of the St. L.-S. F. R. R. with the Midland Valley R. R. at Tulsa, Okla. In the event that we used the same car in which a carload of inbound freight was received from a local point on a connecting line of the St. L.-S. F. R. R., a charge of $5 per car will be made for the inbound movement and an additional charge of $5 will be made for the outbound movement of the car. If we fail to load the car and release it empty, a switching charge of $5 will be made.

In accordance with item 30-A of Supplement 11 to Tariff No. 1069-K, in addition to the switching rate a charge of $4 per car will be made for car rental upon such cars as are loaded and destined to points for unloading, both of which points are within the switching limits of the same station, whether on the tracks of the St. L.-S. F. R. R. or its connections, except at points within the state of Missouri, and except when the cars used are owned or leased by the parties forwarding them.

In order to illustrate the situation covered by the decision of the Supreme Court of the United States in the case referred to above, the sample given therein will be used. The facts are as follows: The S. A. L. Ry. and Southern Ry. both reach Oxford, N. C., and Richmond, Va., and therefore compete for traffic between those points. In order to secure a share of such traffic as would ordinarily move via the S. A. L. Ry. only, that is, shipments from industries located on the S. A. L. Ry. at Oxford, N. C., to industries on that line at Richmond, Va., the Southern Ry. absorbs the switching charge of the S. A. L. Ry. and likewise the switching charge of the Southern Ry. for delivery to its industries is absorbed by the S. A. L. Ry. A number of industries at Richmond, Va., are also located on the Chesapeake & Ohio R. R., but that line, by reason of not reaching Oxford, N. C., with its rails or in connection with lines other than the S. A. L. Ry. or Southern Ry., cannot compete with the S. A. L. Ry. or Southern Ry. for this traffic, and therefore those lines have refused in the past to absorb the switching charges of the C. & O. Ry.

The Commission, however, held in the case of the Richmond Chamber of Commerce vs. S. A. L. Ry. et al., 44 I. C. C. 455, that

it was a discrimination against industries located on the C. & O. Ry. for the S. A. L. Ry. and Southern Ry. to absorb the switching charges of their respective lines, while at the same time refusing to absorb switching to industries on the C. & O. Ry. and that this discriminatory practice must be discontinued, and the Supreme Court of the United States has upheld the Interstate Commerce Commission in its views.

# Miscellaneous Decisions

**Traffic Cases Recently Decided by State and Federal Courts**

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### REGULATION OF COMMON CARRIERS

**Commerce:**

(Supreme Court of Minnesota.) A state may in good faith tax property engaged in interstate commerce. It may not tax the commerce itself. The statute of this state imposing a gross earnings' tax of 8 per cent upon express companies is a good-faith exercise of the taxing power.—State vs. Wells Fargo & Co., 179 N. W. Rept. 221.

(Supreme Court of Minnesota.) Chapter 480, Laws 1913, intends a property tax upon the property of sleeping car companies, taxable within the state, based on gross earnings, and it does not intend nor impose a tax upon interstate commerce. —State vs. Pullman Co., 179 N. W. Rept. 224.

**Taxation:**

(Supreme Court of Minnesota.) The Minnesota Tax Commission has no power to abate any part of the percentage of gross earnings' tax fixed by statute.—State vs. Wells Fargo & Co., 179 N. W. Rept. 221.

The system of gross earnings' taxation as applied to transportation companies violates no provision of the state or federal Constitution.—Ibid.

The legislature has the power, since the constitutional amendment of 1906 (see Laws 1907, p. ix), as well as before, to impose this form of taxation upon express companies.—Ibid.

Matters of classification of property for taxation are matters of state policy. The state may resort to unequal taxation so long as the inequality is not based upon arbitrary distinctions.—Ibid.

A gross earnings' tax is not required to be an exact equivalent of the ad valorem tax imposed on other property.—Ibid.

The state may tax defendant's entire property, tangible and intangible, as used within its limits, as its real value as part of a going concern.—Ibid.

There is evidence that defendant's property had substantial intangible value. The market value of defendant's stock and bonds is not conclusive evidence of the value of its property used in the express business, which is only part of its whole property. A recognized method of arriving at property value, including intangible value, is that of capitalizing net earnings. There is evidence that the value of defendant's property, computed on this basis, largely exceeded the value of its tangible assets, and the evidence sustains the finding of the court that the tax is a fair and reasonable exaction.—Ibid.

(Supreme Court of Idaho.) Under our statute, operating property of a railroad is assessable for taxation by the state board of equalization and non-operating property by the assessor of the county in which it is situated.—Chicago, M. & St. P. Ry. Co. vs. Kootenai County et al., 192 Pac. Rept. 562.

In the statute defining operating property of a railroad, the word "terminal" means property used at the time of the assessment for the purpose of furnishing terminal facilities in the operation of the railroad.—Ibid.

Where a county assessor inseparably commingles property which he has jurisdiction to assess with property which he has no jurisdiction to assess in his description thereof on the assessment roll, the entire assessment is void.—Ibid.

Where the assessment of property is void, it is not incumbent upon the owner thereof to tender payment of the taxes thereon as a condition precedent to his right to cancel a tax sale certificate based upon such void assessment.—Ibid.

### LOANS APPROVED

The Commission has approved loans of $9,630,000 and $1,840,700 to the New York, New Haven & Hartford Railroad Company and the Erie Railroad, respectively. The loan to the New York, New Haven & Hartford was made to aid that carrier in providing itself with equipment and additions and betterments to way and structures at a total estimated cost of $13,525,000. The loan to the Erie was made to aid it in reconstruction of freight transportation equipment at a total cost of $6,680,000, the carrier being required to finance $4,840,000 of the total amount.

# POSITIONS WANTED OR OPEN

**GOOD TRAFFIC MEN ARE MORE THAN EVER IN DEMAND and THE TRAFFIC WORLD is the logical medium for getting the men and the positions in touch with each other. The rates for classified advertisements are as follows: First insertion, $1.00 per line; minimum charge, $3.00; succeeding insertions, per line, 50c; 10 words to the line; numbers and abbreviations counted as words; 8 point type; payable in advance. Answers to keyed advertisements forwarded free and all correspondence held in strict confidence. The TRAFFIC WORLD, 418 South Market Street, Chicago, Ill.**

WANTED—Prominent Traffic Bureau, in existence nine years, serving over twenty-five nationally known concerns, wishing to increase the scope of its work, desires to get in touch with first-class traffic men who could hold responsible positions and make a small investment in the corporation. Excellent opportunity for the trained man. Address "BAC," Traffic World, Chicago.

WANTED—Position as Traffic Manager, railroad experience; would like to engage in the industrial field—lumber or coal preferred. Address O. U. N. 295, Traffic World, Chicago.

POSITION WANTED—Certified Traffic Manager available, experienced railroad, commercial; technical, legal, practical, record of achievement. Young, ambitious. Address E. E. D. 197, Traffic World, Chicago, Ill.

POSITION WANTED—Young man well versed all phases traffic work, with many years' experience, as industrial Traffic Manager; desires connection with progressive concern. Best of references. Address N. O. S. 291, Traffic World, Chicago.

WANTED—Position of Assistant Traffic Manager; seven years' local and general office railroad experience; rates, claims, tracing, railroad records; accounting experience, executive ability, college graduate. Conscientious, ambitious, seeking future. Address H. E. S., Traffic World, Chicago.

POSITION WANTED—Industrial Traffic Manager, at present assistant traffic manager extensive corporation, desires change. Qualified to handle questions of rates before Commission, experienced export, import procedure, proven executive ability and efficient handling claims. Address U. T. T. 287, Traffic World, Chicago.

WANTED—Position as Secretary-Traffic Manager of Chamber of Commerce. Now Secretary-Traffic Manager Southern city over thirty thousand. Seven years' secretarial, ten years' railroad rate making experience. Experienced and qualified in conducting hearings before Interstate Commerce Commission. Thirty-six years old, married. Prefer location south or southwest. Best references as to character and general ability. Address M. R. B., Traffic World, Chicago.

WANTED—Position as rate clerk or assistant traffic manager. Young, competent, tenchnically trained, railroad experience. Efficient in rates, claims, etc. References. Personal interview. Address H. S. 289, Traffic World, Chicago.

# The Open Forum

**A Department for the Discussion by Readers of THE TRAFFIC WORLD of Transportation Questions of Interest to Traffic Men**

## EXCURSION FARES WANTED

Editor The Traffic World:

During the month of October representatives of the University of Nevada requested the railroads serving Reno to establish excursion fares at a reduced rate from Reno to Berkeley, Calif., and return. The reason for this request was occasioned by the fact that the universities of Nevada and California football teams were to play a game at Berkeley on October 16. However, the carriers declined to establish the fares requested. Had reduced fares been granted no less than 200 people would have taken advantage of the reduced rate fares, as there was a great deal of interest in this game.

As there seemed to be considerable doubt in the minds of the public as to whether the refusal on the part of the carriers was brought about on account of some regulation of the Interstate Commerce Commission, federal law, or whether it was simply a policy adopted by the railroads, this bureau was requested to look into the matter.

In response to a letter addressed to railroad officials, the Reno Chamber of Commerce was informed that the carriers intended to adhere to a policy of granting excursion fares only for occasions of such a character for which excursion fares had been authorized by the Railroad Administration during the period of federal control, stating further that it was necessary to take this position in order to protect revenues.

I believe that this policy on the part of the carriers is worthy of discussion.

There is no question in my mind but what the roads have a right, legally, to adopt a policy of this kind, but there is a grave question as to whether it is public policy to follow such a course.

Prior to federal control, all of the railroads in the United States had adopted a practice whereby special reduced round-trip fares were named, open to the public, on various holiday occasions, or for the purpose of allowing the public to attend various meetings or celebrations on special occasions. However, during federal control all of these excursion fares were withdrawn by the Railroad Administration, and such action has been generally considered by the public as a war measure, and little, if any, protest was made against such action, for patriotic reasons.

Now, with the railroads operating under private control again and the war a thing of the past, the average citizen can see no logical reason why he should not be afforded the same privileges as were granted prior to the time the government took control of the roads.

Of course, any reduced fares that might be named, such as a fare and a third for a round trip, would at the present time represent a considerably higher charge for the transportation service than existed prior to the time of government control, for the reason that interstate passenger fares have been increased 20 per cent and a 50 per cent surcharge is being made on Pullman fares. Therefore, the carriers would be receiving the same advance on this class of traffic as they are receiving on other classes.

There is no doubt but what the people of this country are watching closely the attitude of those having control of the railroads of the United States. Through the enactment of the transportation act of 1920, broader powers have been given to the Interstate Commerce Commission, and steps were taken to insure the railroads adequate revenue for the future. Under the provisions of this act the Interstate Commerce Commission has allowed sweeping advances in both passenger fares and freight rates, and the people generally are paying such increased charges with little objection, feeling that the carriers generally throughout the United States are in need of this additional revenue. However, strenuous objection is being made to any attempt on the part of the roads to further increase their revenues by cancellation of various excursion fares which have been in existence for a long time, and refusing to name special reduced rates for occasions of general public interest, such as the Nevada football game, which was played at Berkeley on October 16. In other words, it appears to the public that the roads are not satisfied with the sweeping advances granted by the Interstate Commerce Commission and are, therefore, using every method possible to increase such revenues further, by withdrawing various privileges, and continually throwing greater burdens on the shipping and traveling public.

This is true not only with respect to passenger fares, but also with regard to freight rates. For example, effective August 26, a general advance of 25 per cent was authorized covering the interstate movement of freight within the Pacific-mountain states. It is now found that various means are being adopted by the carriers to augment these increases by changing classifications, further increasing demurrage charges, withdrawing rules and regulations governing the transportation of oil and petroleum products, etc.

I am candidly of the opinion that a different policy must be pursued, if the railroads expect to maintain the confidence of the public. In my opinion, it would be a far better policy for the railroads to again grant some concessions to the public in matters such as the one under consideration, in return for the many concessions which the people have granted the railroads in allowing the large advances in freight rates and passenger fares and continuing to live up to stringent rules and regulations which were first inaugurated by the Railroad Administration as war measures, and which are still maintained.

While it is probably a small matter, I believe that the refusal on the part of the railroad companies to grant excursion fares from Reno to Berkeley and return in the instance cited, has done much (in this community) to destroy public confidence.

In this connection it might be well to call your attention to the fact that many of the short-line railroads, which are in much greater need of additional revenue than the trunk lines, are still continuing to recognize the advisability of granting some concessions to the patrons of their roads by naming excursion fares for events of public interest. In some cases these reduced fares are as low as one fare for the round trip.

By adopting a broad public policy of again naming excursion fares for holiday occasions open to the general public, and abandoning the practice of continually making changes in classifications, rules and regulations, which result in throwing increased burdens on the traveling and shipping public, a great deal could be done toward creating a feeling of harmony and good-will between the railroads on the one hand and the public generally on the other hand.

E. H. Walker, Traffic Manager,
Chamber of Commerce.

Reno, Nev., Nov. 13, 1920.

## OFF-LINE AGENTS

Editor The Traffic World:

Referring to letter published on page 827 of your October 30 issue, by J. D. Hashagen, I would state that the primary purpose in establishing off-line offices is to get business for the road they represent, at the same time furnishing the local shipper such information and assistance as the shipper may require. However, the men usually placed in charge of these offices, and their assistants, are traffic men and salesmen, and very seldom are rate men—and there is a wide difference between the two. Keeping a complete file of tariffs in Los Angeles, for example, for the Pennsylvania System, would be a big job, requiring several men, and I doubt if the Pennsylvania agent would be called upon more than once a week for rate information. This information, when called for now, can easily be obtained by wire. In my office we are constantly checking local rates between dozens of mills located throughout New England and in C. F. A. territory. For this work I use a set of C. F. A. tariffs and an east and west bound billing guide and an east and west bound percentage map. This gives me everything east of the river except local rates. For local rates I have a printed blank made up which I send to each mill from which we desire rates, and ask them to fill in the rates wanted, the printed blank being so constructed as to indicate exactly what is wanted in the way of rates, commodities, references, etc. These sheets or blanks are printed standard letter size and upon being returned to me are filed in a tariff binder. Every few months they are revised to keep them up to date. In this way I always have at my finger ends the exact information I need from every mill we do business with and not a sheet more than I need.

I doubt very much if it would be feasible to keep a set of tariffs in foreign line offices. It would mean doubling the force and, in all likelihood, the requests for information would not justify the expense. I think each traffic man has his own problems, which he can work out to good advantage, and in the occa-

sional case where we need help, the foreign lines are always ready to help us out at a minimum of expense to themselves.

J. M. Ford, Traffic Manager,
Blake, Moffitt & Towne.

Los Angeles, Calif., Nov. 15, 1920.

## PRIVATE CAR MILEAGE

Editor The Traffic World:

We have noted on page 782 of The Traffic World, October 23, the analysis of Fairbanks' freight tariff No. 7, I. C. C. No. 10, covering the payment of and equalization of mileage on private cars, and we believe that there is one very important point that affects the equalization of mileage, that should have been incorporated in this tariff.

Page 18, item 28, of the tariff provides: "Settlements will be computed on the basis of actual distance via the route car moves." And item 29: "Should the aggregate empty mileage of any owner's cars on June 30 of each year exceed the aggregate loaded mileage on the lines of such railroads, such excess must be paid by the owners, either by an equivalent loaded mileage during the succeeding six months, or at tariff rates without minimum." The tariff rate in this territory is 7½ cents per mile.

Our experience has been that it is almost impossible for us to equalize empty mileage, not because of any fault of our own, but because the rail lines do not always observe the routing shown in the bill of lading. Of course, they should not always be held responsible for changing the routing, as that is often done to get around embargoes and congestions, which greatly facilitates the movement of the car. The point we wish to bring out is, we believe, made clear in the movement of GATX 445, hereinafter quoted.

GATX 445, turpentine, was shipped from Ringwood, La., June 3, 1920, to W. P. Fuller Company, San Francisco, Calif., routed T. & G. M. P. and Santa Fe. We do not specify junction points in our routing, leaving that feature to the rail lines, in order to facilitate the movement. We instructed Fuller to return the tank to Lake Charles, La., via Santa Fe and Mo. Pac. (reverse routing). Below is the actual move of the car:

| | Mileage loaded. | Mileage empty. |
|---|---|---|
| Ringwood, La., to Winnfield, La., via T. & G. | 9 | .... |
| Winnfield to Shreveport, La. via L. R. & N. | 120 | .... |
| Shreveport to Kansas City via K. C. S. | 550 | .... |
| Kansas City to Pueblo, Colo., via M. P. | 618 | .... |
| Pueblo to Belen, N. M., via A. T. & S. F. | 442 | .... |
| Belen, N. M., to Bakersfield, Cal., via S. F. Coast Lines | 873 | .... |
| Bakersfield to San Francisco, via S. P. | 316 | .... |
| San Francisco to Bakersfield, via S. P. | .... | 316 |
| Bakersfield to Belen, N. M., via S. F. Coast Lines | .... | 873 |
| Belen to Pueblo, Colo., via A. T. & S. F. | .... | 442 |
| Pueblo to Lake Charles, La., via M. P. | .... | 1,688 |

With the exception of the M. P., the above empty mileage is equalized. On the M. P. we were unfairly charged an excess of 1,070 empty miles, which we are obliged to equalize, because the T. & G. did not regard the routing. The bill of lading did not show L. R. & N. nor K. C. S. The car would have moved over a more efficient and much quicker route had it moved by the M. P. to Oakdale, La., and Santa Fe. This is only one instance, but we can quote fifty similar cases that have occurred in the last three or four months.

It can readily be seen how difficult a matter it is for us to equalize mileage. We are sure that other operators of private cars have experienced the same trouble and we believe the above-mentioned tariff should contain a provision allowing that mileage be based on the bill of lading routing (junction points to be shown) and not on the actual move of the car, provided, of course, the routing is practicable. Owners should not be held responsible for empty mileage accruing on cars out of route.

In a letter received by this office from the car accountant, Santa Fe Lines, it is stated that mileage cannot be handled on the basis of bill of lading routing, as there is no way to check this feature in the car accountant's office, as the bills of lading are not filed in his office. It appears to us that it would be a simple matter to have the agents make and forward a copy of each bill of lading covering the movement of a tank car to the car accountant's office. This would give the operators of private cars a fair chance to equalize their empty mileage.

If other operators of private cars would take this matter up with the railroads as we have done, some results may be obtained.

Gillican-Chipley Co., Inc.,
D. R. LeRoy, Traffic Department.

New Orleans, La., Nov. 5, 1920.

### APPROVES G. M. & N. LOAN

The Commission has approved a loan of $515,000 to the Gulf, Mobile & Northern Railroad Company to aid the company in providing itself with six freight and switching locomotives at an estimated total cost of $227,400, and additions and betterments to existing equipment and to way and structures at an estimated total cost of $401,500. The company is required to finance about $114,000 to meet the loan of the government.

## Personal Notes

The Pennsylvania Railroad System has re-established its "off-line" freight and passenger agencies in ten leading traffic centers outside the company's own territory. These agencies were in operation in pre-war days, but were discontinued while the railroads were being operated as a unit for military purposes. The cities in which both freight and passenger agencies have now been reopened are Dallas, Tex.; Minneapolis, Minn.; Kansas City, Mo.; Los Angeles, Calif.; New Orleans, La.; Omaha, Neb.; Boston, Mass.; Seattle, Wash.; and San Francisco, Calif. In addition, a freight agency only has been opened at New Haven, Conn.

A. C. McKinley is appointed general agent of the Lake Erie & Western Railroad Company and Fort Wayne, Cincinnati & Louisville Railroad at Chicago.

Perry W. Reed, heretofore general freight agent of the Gulf, Florida & Alabama Railway, is appointed general freight and passenger agent, with office at Pensacola, Fla. The position of traffic manager is abolished.

W. H. Latham, Jr., has been appointed assistant traffic manager of the Midwest Box Company, Chicago.

The Chesapeake & Ohio Railway announces the appointment of K. T. Crawley as manager, agricultural and industrial department, S. C. Covert as industrial agent, and C. J. Jehne as agricultural agent.

J. D. Maginn has been appointed traveling freight agent of the Ann Arbor Railroad, with headquarters at 312 Park building, Pittsburgh, Pa.

L. A. Clark, who for more than twenty years was traffic manager for Ball Brothers Glass Mfg. Company, Muncie, Ind., died on the thirteenth, after a five weeks' illness.

J. C. Spencer has been appointed traveling freight agent of the Central of Georgia Railway, with headquarters at 1324-1325 Graham building, Jacksonville, Fla.

William T. Price has been appointed general agent, freight department, Union Pacific System, at Kansas City, Mo., with headquarters at 217 Railway Exchange building.

## DOINGS OF THE TRAFFIC CLUBS

As a result of a call for a smoker Friday evening, November 12, for the purpose of reviving the Transportation Club of Peoria, there was a gathering of one hundred men who agreed to help bring the club back to its former basis. G. H. Gillig was reelected president and O. B. Eddy, secretary-treasurer. The club will hold monthly dinners and a campaign for new members will be prosecuted.

The Traffic Club of New York will hold its annual meeting and informal dinner at the Waldorf-Astoria the evening of November 23.

There is no opposition to the regular ticket, which was submitted by the nominating committee at the October meeting, and the gentlemen placed in nomination by that committee will be duly elected. Following the installation of the new officers, the standing committees for the ensuing year will be announced.

### QUARTERLY ACCIDENT BULLETIN

In the quarter ending March 31, 1920, according to accident bulletin No. 75, issued by the bureau of statistics of the Interstate Commerce Commission, November 17, 15,297 persons were injured in train and train service accidents.

The carriers reported the subsequent fatality of 136 persons, included in the above number, who died after more than 24 hours had elapsed from the time of their injury.

There were 8,346 train accidents, which number includes 7,555 accidents that resulted in damage to railway property in excess of $150 but in no casualties to persons. In the remaining 791 train accidents, in which casualties to persons resulted, there was a total of 144 persons killed, and 1,961 injured.

### CHANGES IN DOCKET

Hearing in No. 11406, State of Idaho ex rel. Public Utilities Commission of the State of Idaho vs. Northern Pacific et al., assigned for November 16 at Boise, Idaho, was canceled.

Hearing in I. & S. 1222, Cotton from Oklahoma to Eastern and Canadian points, assigned for November 13 at Dallas, was cancelled.

### TO FORM STATE TRAFFIC LEAGUE

Plans are under way for the formation of a New York State Traffic League, and a meeting was held at the Waldorf-Astoria hotel in New York City on November 17 to consider the matter.

A preliminary meeting was held in Rochester on the 3rd, which was attended by traffic men from different sections of the state and the value of such an organization was pointed out.

# Questions and Answers

In this department will be answered questions of both legal and practical nature that confront persons dealing with traffic. A specialist on interstate commerce law, who is a member of our legal department, will give his opinion in answer to any simple question relating to the law of interstate transportation of freight. A traffic man of long experience and wide knowledge will answer questions relating to practical traffic problems. We do not desire to take the place of the traffic man but to help him in his work. Persons desiring immediate answer by mail or wire or a more elaborate treatment of any question—by the citation of authorities in a legal opinion, for instance—may obtain this kind of private service by the payment of a reasonable fee. The right is reserved to refuse to answer in this department any question, legal or traffic, that it may appear to us unwise to answer or that involves a situation too complex for the kind of investigation herein contemplated.

Address Questions and Answers Department,
**Traffic Service Corporation,** Colorado Building, Washington, D. C.

### Application of Interstate Express Rates on Interstate Traffic

**Pennsylvania.**—Question: In the Local and Joint Schedule of First and Second Class Express Rates No. 5 tariff, which gives the express rates, effective on October 13, 1920, there appears on page 2 the following rule for the application of this tariff:

**Application of Tariff**

Interstate Traffic.—This tariff applies on interstate traffic, i. e., from a point in one state or the District of Columbia to a point in any other state or between points in the same state which, in order to reach destination, is carried over lines lying partly outside the state.

Intrastate Traffic.—This tariff will also apply on intrastate traffic in the following states, viz.: Connecticut, Delaware, New Jersey, Oregon.

Referring to the paragraph under the caption "Interstate Traffic" it is our understanding that interstate rates as shown in the tariff will apply on all intrastate movements of express shipments over lines extending into other states even though the actual movement of the shipment does not extend beyond the boundaries of the state in which both originating and destination points are located, our view being that this rule has been inserted in the tariff in view of the existing conflictions in many cases between the Interstate Commerce Commission and state commissions.

In the second clause under the caption "Intrastate Traffic" we find, however, that the rates as shown in the tariff are specifically referred to as applying on such shipments in the four states mentioned. If the interstate rates are to apply on intrastate movements, under the first paragraph of the rule of application in accordance with our understanding of the matter, why should it have been necessary to specifically provide that rates are also applicable on intrastate movements in the states mentioned? An explanation of the meaning of these provisions will be greatly appreciated.

Answer: Under the application of the paragraph captioned "Interstate Traffic" the rates apply only on interstate traffic, that is, on traffic between a point in one state and a point in another state or between two points in the same state when the shipment is carried outside of that state in transit between such points. This paragraph outlines the interstate application of the tariff. The interstate rates under the application of the tariff in question apply on intrastate traffic only to the extent outlined in the second paragraph, under the caption "Intrastate Rates."

### Undercharges—Liability of the Consignee for

**New York.**—Question: During 1915 we purchased a carload shipment f. o. b. station "B" from shippers located at station "A." This car we had shipped from station "B" to station "C," and when the freight bill was presented it was for freight charges from station "B" to station "C," which we paid, as it was correct.

The railroad company has now written us for back charges on this shipment, stating that the same was shipped from station "A" and that the correct freight charges to collect on this shipment were from station "A" to station "C," and, as we had paid charges from "B" to "C," there was still outstanding charge.

The shippers of this car have dissolved partnership, but they are still located at station "A," each in business for himself. We notified the railroad company that we had purchased this lumber f. o. b. station "B" and had made settlement with shippers thirty days from date of shipment and that any outstanding charge should be collected from them. Carrier advises us that they have written shippers and do not receive any reply to their letters, so must look to us, as consignee, for payment of this outstanding charge.

As to liability of consignee in a case of this kind, they quote decision handed down by the U. S. court, in the case of Duncan and United Steel Co., 244 Fed. 258, cited Aug. 24, 1917, wherein the court for the Northern District of Ohio held that delivery and acceptance of a car raises an implied promise on the part of the consignee to pay the freight thereon, and it is not released from such liability as matter of law by the fact that consignor is also liable for the freight, either under the law or by expressed promise to pay it. We wish that you would kindly advise us in regard to the above, as to whether or not we are liable for the freight charges from station "A" to station "B" on this shipment.

Answer: Conference Ruling No. 314 of the Interstate Commerce Commission reads as follows: "The law requires the carrier to collect and the party legally responsible to pay the lawfully established rates without deviation therefrom. It follows that it is the duty of carriers to exhaust their legal remedies in order to collect undercharges from the party or parties legally responsible therefor. It is not for the Commission, however, to determine in any case which party, consignor or consignee, is legally liable for the undercharge, that being a question determinable only by a court having jurisdiction and upon the facts of each case."

In a comparatively recent case involving the collection of undercharges from the consignee, namely, the case of the P. C. C. & St. L. Ry. Co. vs. Alvin J. Fink, page 1396, of the December 20, 1919, issue of The Traffic World, the Supreme Court of the United States held that the consignee was liable for the payment of the remaining part of the legal rate upon merchandise received by him, notwithstanding the fact that the carriers collected only part of the charges upon delivery of the shipment.

We are of the opinion that you are liable for the balance of the freight charges in the instant case.

### Misrouting—Interstate vs. Intrastate Route

**Minnesota.**—Question: A less-than-carload shipment is tendered the carrier for a point in the same state. Mileage on shipment moving intrastate is 400 miles and rate 44½ cents per cwt., but mileage on the shipment moving interstate is 264 miles and rate 54 cents per cwt. No routing instructions are given by shipper, and carrier moved shipment interstate and claims correct rate is the rate via which shipment moved. Which is the correct rate to apply?

Answer: The general rule, in accordance with the decisions of the Commission, is that a shipment is misrouted by the carrier which is forwarded over an interstate route at a higher rate than would have applied had the shipment moved via an available intrastate route. See Lathrop Lumber Co. vs. A. G. S. R. R. Co., 27 I. C. C. 250; McCaull-Dinsmore Co. vs. Great Northern Ry. Co., 41 I. C. C. 178, and Page & Hill Co. vs. C. St. P. M. & O. Ry., 51 I. C. C. 487. This rule is, however, subject to the qualification that the intrastate route must be a reasonable and practicable route. See McCaull-Dinsmore Co. vs. Great Northern Ry. Co., 47 I. C. C. 581.

### Part Shipment Held Pending Arrival of Balance

**Pennsylvania.**—Question: A car containing 100,000 pounds of flour in sacks was shipped from Minneapolis, Minn., via lake and rail to Philadelphia, Pa., for delivery through one of our public warehouses. When the shipment moved east of Buffalo only 50,000 pounds were forwarded, and this portion of the shipment arrived, being properly placed in the warehouse. The other 50,000 pounds did not come forward until some time later and the consignee declined to accept delivery until the entire 100,000 pounds reached destination. The warehouse company charged storage and insurance against the 50,000 pounds held awaiting the arrival of the 50,000 pounds balance of the shipment, and on the arrival of the completed shipment the consignee presented the bill of lading and accepted delivery. Is the consignee obliged to pay storage and insurance on the first half of the shipment which arrived or should the carriers refund this charge, amounting to about $20?

Answer: In the case of Darling & Co. vs. P. C. C. & St. L. Ry. Co., 37 I. C. C. 401, the Commission held that demurrage was properly assessed on a carload of fertilizer held at destination pending the arrival of a second car, both cars having been covered by a single bill of lading. In this case the Commission said: "Separation of cars in transit is a common incident of transportation, involving no presumption of negligence on the part of the carrier, and no negligence is here charged or shown. In cases where delivery of less than an entire shipment is tendered, the consignee has the alternative of either releasing the equipment by unloading the portion offered for delivery or of paying charges prescribed for its detention. If it elects to defer unloading until the arrival of the entire consignment, it cannot be heard to complain of the resulting additional cost. A rule beneficial in its general application may work occasional hardship, but is not merely on that account to be condemned."

Inasmuch as the shipment in the instant case could have been held in the car had the carrier so desired, instead of being placed in a warehouse, we are of the opinion that the views expressed by the Commission in the case referred to above are applicable to the present case and that therefore the carrier is not liable for the storage charge and insurance which accrued on the shipment.

### Conversion—Time Within Which to File Suit

**Ohio.**—Question: Will you kindly advise the carrier's liability for misdelivery under the following circumstances?

Carrier's agent delivers shipment to consignee without sur-

render of the original order bill of lading and, through oversight of shipper, matter is not brought to attention of carrier until over two years from date shipment moved. Consignee has since gone out of business and shipper demands that carrier reimburse him for value of shipment. The carrier's claim department contends that the two-year limitation has expired and refuses to remit.

It is our contention that this is a simple case of diversion and that the two-year limitation has no bearing, as carrier's act in delivery without proper evidence of ownership is conversion or misappropriation of property, and suit to recover can be brought in common law court having proper jurisdiction. Will you kindly cite us to any decisions or previous copies of The Traffic World containing similar cases?

Answer: An action against a carrier for conversion of a shipment, by reason of the carrier having delivered an order notify shipment without requiring surrender of the bill of lading is governed by the statute of limitations of the state in which the point of delivery is located.

### Demurrage—Notification on Cars Placed for Loading Not Required by Demurrage Rules

**Minnesota.**—Question: On a certain date we placed two empty cars at a blind siding for post loading; four days after cars were placed the shipper notified us that they would not load the cars because we had not notified them that the cars had been furnished. The shipper lives at another point from where cars were placed, but in the past has always made inquiries from the train crew if any cars were to be placed for his loading.

We presented a bill for demurrage for the cars after they had been taken out empty and brought to our terminal and returned to the connecting line empty, as we had no other loading for them. The shipper refuses to pay the demurrage, claiming he was not notified in time to load the cars within the free time allowed. Are we at fault or can we force payment of the demurrage charges?

Answer: Rule 6, section A of the Uniform Demurrage Rules and Charges, as published in Agent J. E. Fairbanks' Demurrage Tariff 4-A, I. C. C. No. 8, to which tariff you are a party, reads in part: "Cars for loading will be considered placed when such cars are actually placed or held on orders of the consignee." Inasmuch as neither this rule nor rule 4, "Notification," requires a notification for empty cars placed for loading, a notification of placement need not be given, except that, in accordance with rule 3, section A, if a car is not placed within 24 hours after 7:00 a. m. of the day for which ordered, time will be computed from 7:00 a. m. after the day on which notice of placement is sent or given to consignor.

### Published Rate Only Lawful Rate

**Iowa.**—Question: Under date of July 13, 1920, there was shipped to us by express carload of cherries from Lockport, N. Y., to Waterloo, Ia. The express charges as paid were based on the second class rate under scale No. 45 of $2.28 per cwt. We note that there is a commodity rate of $2.11 from this block to Omaha, Neb., as provided for in I. C. C. tariff 1038, effective Jan. 1, 1919, section 7. Upon referring to application of this tariff as shown on page 1, it provides by authority of I. C. C. Circular 19-A that this tariff is not made applicable from and to all intermediate points. Upon reasonable request therefor rates not to exceed those in effect from or to more distant point will under authority granted by the Interstate Commerce Commission be established from or to any intermediate point herein under one day's notice to the Commission and the public.

We have requested refund to the basis of the intermediate rate to Omaha, but their traffic manager advises that he could not apply Lockport rate to Omaha, effective at that time, but must use the second class rate under scale No. 45, for the reason that application for rate was not made before shipment moved. However, they have put this rate in force from Lockport to Waterloo, Ia., effective September 1, 1920. Would appreciate hearing from you if the contention of the traffic manager is correct.

Answer: The only rate which can be charged on the shipment in question is the lawfully published rate of $2.28 per 100 pounds.

An application for the publication of the lower rate should have been made prior to the movement of the shipment. The only means of securing a refund of the difference between the rate paid and the rate to the more distant point is through an application to the Commission.

### Graduated Minimums—Orders for Cars Should Specify Size

**Colorado.**—Question: Will you kindly advise if the Interstate Commerce Commission has ruled, formally or informally, or if any of the courts have ruled on the following proposition?

If a shipper ordered a car for shipment of live stock, not specifying the length desired, is the railroad company justified in furnishing a 40-foot car and charging thereon the minimum weight for a 40-foot car when the actual weight of the shipment was less than the minimum on a standard or 36-foot car?

Annswer: Section 4 of rule 34 of Consolidated Classification No. 1 provides: "Except when furnished by carrier in place of a shorter car ordered, if a car over 36 feet 6 inches in length is used by shipper for loading articles 'subject to rule 34' without previous order having been placed by shipper with carrier for a car of such size, the minimum weight shall be fixed for the car used."

While we have been unable to locate any decisions with respect to shipments made under a tariff which provides for graduated minimums, but which does not contain a provision similar to section 4 of rule 34 of the Consolidated Classification, which hold that it is the duty of a shipper to specify the size of car desired, the fact that graduated minimums are published, in our opinion, places the burden upon the shipper of specifying the size of car desired, and his failure to do so justifies the carrier in assessing charges on the size of the car furnished.

### Storage

**Michigan.**—Question: Will you please advise as to whether the carrier was in the right in the following instance? A shipment consigned to us on an order bill of lading, arrived before the bank had the bill of lading, properly indorsed, and we were advised by the carrier that the goods would go in storage at the end of 48 hours. It happened that the last day free time was Saturday, and the banks close at 12 o'clock noon on this day. At closing time the bank did not have the bill of lading and as result the goods went into storage on Monday morning.

It is my contention that we only had 44 hours' free time and, inasmuch as the carrier would not release the goods without the bill of lading, and we were unable to procure this bill from the bank until Monday morning, the carrier did not give us 48 hours free time and were not within their rights in putting goods in storage.

Answer: Inasmuch as a carrier cannot, without incurring liability, deliver goods without requiring the surrender of an order bill of lading, the carrier is clearly within its rights in assessing storage charges on the shipment in question. This for the reason that the full 48 hours' free time allowed under demurrage and storage rules was given for the removal of the freight from the car or railroad premises, as you had all of Saturday to remove the goods and the fact that you were unable to do so by reason of being unable to produce the bill of lading because of the closing of the bank at noon on Saturday does not warrant the carrier's departing from its tariff rules in respect to the free time allowed for the removal of goods from cars or railroad premises under their storage and demurrage tariff.

### Claims—Sufficiency of Notice

**California.**—Question: I have noted numerous questions and answers in The Traffic World regarding carrier's liability covering loss of goods where claim is not filed within the bill of lading six months' clause. I once had a case where an entire car was lost, evidently confiscated by carrier, although no record is obtainable of the car after it was transferred en route. Tracers were sent out and careful search made, but no trace of the car was obtained. Does the tracer protect or answer the purpose of notice to file claim, and is the carrier liable to the owner of the goods if it used them itself?

Answer: Conference Ruling No. 510 of the Interstate Commerce Commission reads as follows: "Modifying Conference Ruling 456. It is the view of the Commission that the provision in the uniform bill of lading requiring that claims for loss, damage or delay must be made in writing within a specified period is legally complied with when the shipper, consignee, or the lawful holder of the bill of lading, within the period specified, files with the agent of the carrier, either at the point of origin or the point of delivery of the shipment, or with the general claims department of the carrier, a claim or a written notice of intended claim, describing the shipment with reasonable definiteness." The mere request by the shipper of the carrier to trace a lost shipment is not equivalent to a claim or a written notice of intended claim within the meaning of the above ruling.

### Reconsignment—Carrier Liable for Additional Charges Resulting from Failure to Observe Shipper's Instructions

**Ohio.**—Question: On May 24 we made an L. C. L. shipment via the Nickel Plate, consigned to our customer at Paterson, N. J. The following day, May 25, we called the railroad company and requested shipment re-consigned to ourselves at New York City, which was confirmed by letter. The originating carrier did not issue instructions to the agent at Paterson until May 29. Delivery was made to the original consignee at Paterson, N. J., who accepted, and shipment was then reforwarded to New York City, on which the railroad company charged a local rate from Paterson to New York.

Kindly advise whether we can collect a claim covering the freight charges from Paterson to New York plus the cartage at Paterson, and state authority.

Answer: In its opinion in the Reconsignment Case, 47 I. C. C. 590, the Commission held that the rule providing that if request is made for a diversion or reconsignment of freight the carrier will make diligent effort to locate the shipment and

effect the desired service, but will not be responsible for failure to do so unless such failure was due to negligence of its employes, is justified.

Assuming that the tariffs of the carriers in question provide for the reconsignment of less-than-carload shipments, if the failure to reconsign was due to the carrier's negligence, the carrier is responsible for the additional freight charges incurred as a result of its negligence. See Hathway Lumber Co. vs. L. & N. R. R. Co., Unreported Opinion 544; Reeves Coal Co. vs. Pere Marquette R. R. Co., 34 I. C. C. 621, and Central Foundry Co. vs. Southern Ry., 42 I. C. C. 333.

### Reconsignment Rules in Effect Date Shipment Leaves Point of Origin Govern Movement to Final Destination

**New Jersey.**—Question: On a car shipped to a certain point prior to August 26, arrived at destination after August 26 and reconsigned to another point. Will you kindly advise us through the columns of The Traffic World whether the old or new rates apply from the reconsignment point to the new destination, giving authority?

Answer: Rule 5 (c) of Tariff Circular 18-A of the Interstate Commerce Commission reads as follows: "If no specific rate from point of origin to destination of a through shipment is provided, and no specific manner of constructing combination rate for it is prescribed, the lowest combination of rates applicable via the route over which the shipment moves is the lawful rate for that shipment.

"Such combination through rate must be treated as a unit from the date of original shipment to the date of its arrival at destination, and the rate applied must be the combination of the rates which exists upon the date of original shipment. All of the conditions, regulations and privileges obtaining as to any factor in such combination rate for through shipment at the time of original shipment upon such combination through rate must be adhered to and cannot be varied as to that shipment during the period of transportation of such shipment to its final destination. A local or proportional rate "in" cannot be absorbed, diminished, or affected by any "out" rate not in effect at the time when the traffic moved upon such local or proportional rate." Furthermore, under the application of the uniform reconsignment rule, the rate to apply is the rate via the route shipment moved from point of origin to destination in effect at time the shipment left point of origin and not the rate in effect on the date of reconsignment.

### Application of Increased Rates Under Ex Parte 74 Where Arbitraries Are Used

**Kansas.**—Question: In checking the second and third class rates from Chicago, Ill., to Hutchinson, Kan., as per Agent E. B. Boyd's tariff 18-J, I. C. C. A-1069, I note the carriers provide in their special supplement, effecvtive August 26, 1920, for increasing each factor separately and making rate ½ cent higher than by increasing the rate effective up to August 25, 1920, plus the 35 per cent, as allowed by the Interstate Commerce Commission.

In other words, the second class rate up to August 25, figured $1.14 from St. Louis, plus 25 cents arbitrary from Chicago, making rate $1.39, which increased the 35 per cent made through rate $1.87½. By increasing each factor 35 per cent the rate is $1.88. While this is strictly in accordance with the advance supplement, the decision of the Interstate Commerce Commission, as I take it, allows only a 35 per cent increase in the rates and did not authorize the carriers to file supplements for a greater amount. Will you kindly advise whether such contentions have had further consideration by the Commission, and whether carriers' special supplements have been correctly filed?

Answer: The Interstate Commerce Commission, in exhibit A, attached to its special permission No. 50340 of August 5, 1920, granting the carriers permission to make the increased rates effective by means of special supplements authorized the publication of the following provision: "If a tariff or a prior supplement to a tariff enumerated herein contains arbitraries, differentials or local rates to be used in connection with base rates, the table of increased rates shall be applied to each of such factors in determining the increased total rates." It appears, therefore, that Agent Boyd has issued his special supplement in accordance with the Commission's special permission.

It is noted that the above method differs from that used at the time increased rates were authorized by General Order 28 of the Railroad Administration. The increased rates at that time were arrived at by adding the arbitraries to the base rate and the total thus obtained was increased 25 per cent. However, when specific rates were published, the 25 per cent increase was added to each of the separate factors and had the same effect as was authorized by the Commission in its special permission 50340.

### Routing—No Liability on Part of Carrier in Following Shipper's Instructions

**Illinois.**—Question: During the middle of March Chicago was embargoed, so we were unable to ship our commodity into this territory over the line which served our plants in this city. By routing this commodity by way of C. B. & Q. at Peoria and the Rock Island into Chicago, we were able to have this stoneware hauled into Chicago over the line which serves our plants there and save switching and avoid the embargo. There is no through rate which applies over this line, and we were obliged to pay the local rate to Peoria and the local rate from Peoria to Chicago. This combination rate resulted in a 27-cent rate against a 12½-cent commodity rate we are favored with by shipping into Chicago over the Burlington and switching to the Rock Island plant. Upon our bill of lading in billing cars this way we were forced to show that we desired the shipment to be routed C. B. & Q., Peoria and Rock Island, and for convenience we showed the through local rate. Claim has been filed with the Burlington for the difference in the freight rate and from a legal standpoint, would we be able to collect the difference in freight rate in view of the fact we knew the higher rate would be assessed via this routing

Answer: Inasmuch as the shipments were forwarded via the route over which the higher rate applied, upon your specific instructions, upon your being informed that the rate via which the lower rate applied was embargoed, your claim for refund will not receive favorable consideration by the Commission. See Holgate Brothers Co. vs. Pa. R. R., 51 I. C. C. 515; S. C. Woolman & Co., Inc., vs. T. St. L. & W. R. R., 48 I. C. C. 441, and Graham County Lumber Co. vs. Southern Ry. Co., 50 I. C. C. 231.

### Application of Demurrage Charges—Definition of Track Storage and Off Track Storage Not in Transit—War Tax on Demurrage Charges

**Missouri.**—Question: We wrote you under date of May 20 relative to demurrage charges. We called your attention to the demurrage charge prior to July 20, 1919, and requested that you advise us the correct demurrage charge on a car arriving at destination after July 20.

Would the new demurrage rate apply or the one in effect prior to July 20? In your letter of May 26 you referred us to the I. C. C. Conference Ruling of October 7. We would thank you to advise us what is considered track storage and off track storage not in transit.

We would further ask you to advise if the railroads are obliged to collect war tax on demurrage charges on a car held at original destination on railroad hold track awaiting reconsigning instructions.

Answer: In view of the fact that shipment arrived at destination after July 20, 1919, the scale of demurrage charges which became effective on that date should be assessed on the shipment in question. The above is in accordance with Conference Ruling of the Interstate Commerce Commission dated October 7, 1919, reading as follows: "Demurrage and Storage Rules.—Upon inquiry and to remove the confusion that exists among carriers and shippers, held, that demurrage, track storage and off track storage not in transit, are controlled by the tariffs in effect contemporaneously with the accrual of these services, and, therefore, are subject to such changes as lawfully may be made in the applicable tariff during the period of accrual; that off track storage in transit is controlled by the tariffs in effect upon the date of shipment. (Rescinding Conference Rulings 405 and 473.)

A track storage charge is a charge assessed in addition to the regular demurrage charge on shipments held in or on cars and is in reality an additional demurrage charge, the imposition of which is made necessary by conditions existing at a particular yard or yards in a city, by reason of excessive delays in unloading cars.

Off track storage not in transit is nothing more or less than plain storage. The Commission, in its Conference Ruling, referred to it as off track storage not in transit in order to distinguish it from track storage and off track storage in transit. Off track storage in transit is storage on shipments which are unloaded in transit, stored in carrier's storage yards, and later loaded into cars and transported to destination.

Demurrage charges assessed on cars held at original destination on railroad hold tracks waiting reconsigning instructions are not subject to war tax. The above is in accordance with article 51 of Regulations 49 (Revised) of the Treasury Department, reading in part as follows: "Demurrage is a charge and a penalty imposed by a railroad company for the detention of its cars and the occupation of its tracks beyond a reasonable time after the arrival of the goods; it is not a part of the transportation and is not subject to tax."

### Routing—Carriers Must Secure Shipper's Instructions Before Forwarding Shipment via More Expensive Route than Route Shown in Bill of Lading

**New York.**—Question: We recently shipped a number of cars of wood pulp from a point in Canada to a point in the United States to which there was no published through rate. We routed these cars via a route over which the lowest combination of locals applied, but for some reason the shipments were diverted at Buffalo to another route over which a higher combination applied, and the higher combination was charged.

We understand that the Interstate Commerce Commission has ruled that the lowest charges should prevail in instances

of this sort, even though the shipments move over a higher rate route, but we are not sure as to whether the Canadian Commission has ruled the same way, and we would like to be advised as to the carrier's liability in case an embargo had been placed after the cars left origin point, so that the original routing could not be carried out.

Answer: In accordance with Conference Ruling No. 83 and the cases cited therein, if a carrier forwards a shipment to destination over a route via which a higher rate applies without instructions from the shipper, because of the fact that bill of lading route is embargoed, the carrier is liable for the resulting increase in transportation charges. Under the decisions of the Interstate Commerce Commission a carrier must observe the shipper's routing instructions and is liable for misrouting in not following such instructions. We are not familiar with the rulings of the Canadian Commission with respect to this matter.

## Digest of New Complaints

No. 11840, Sub. No. 1. Inland Empire Paper Co., Millwood, Wash., vs. C. M. & St. P. Ry. Co. and Spokane Intl. Ry. Co., J. B. Payne, as agent.
Unjust, unreasonable and unjustly discriminatory rates from points in Idaho and Washington to Spokane and Millwood by reason of the exaction of the pulpwood instead of the log rates. Asks for a cease and desist order and reparation.

No. 11846, Sub. No. 1. Times Publishing Co. et al., Okmulgee, Okla., vs. Ahnapee & Western et al.
Unjust and unreasonable rates on newsprint paper from various points of origin to Okmulgee. Ask for just and reasonable rates and reparation.

No. 11874, Sub. No. 1. Republic of France vs. John Barton Payne, as agent.
Unjust, unreasonable and unjustly discriminatory storage rates on thirty-three carloads of caustic soda packed in iron drums shipped to New York for export to France, but stored on the docks and property of carriers under the control of the Director General serving the port of New York. Asks for reparation.

No. 11875, Sub. No. 1. Republic of France vs. John Barton Payne and Pa. R. R. Co.
Unjust, unreasonable and unjustly discriminatory charges at New York on iron and steel held on the ground. Asks for a cease and desist order and reparation amounting to about $32,000.

No. 11898. Beaumont Chamber of Commerce vs. Beaumont, Sour Lake & Western et al.
Against rates on rough rice from points in Louisiana and Arkansas to Beaumont, as unjust, unjustly discriminatory and unduly prejudicial. Asks for reasonable rates and reparation.

No. 11908, Sub. No. 1. Natl. Fireproofing Co., Pittsburgh, vs. P. C. C. & St. L. et al.
Against a rate of 70c per net ton on coal in the Clinton district to Brazil, Ind., as unjust and unreasonable. Asks for a rate not in excess of 50c and reparation.

No. 11926. Cannon Mfg. Co., Kannapolis, N. C., vs. Southern et al.
Against a rate of 25c prior to June 25, 1918, and 31½c subsequent to June 25, 1918, on sulphuric acid from Richmond, Va., to Kannapolis because in excess of a commodity rate of $2.50 per net ton from Richmond to Charlotte, N. C., and $3 per ton to Greenville, Anderson, Pelzer and Spartanburg, S. C., all intermediate to Richmond and Kannapolis. Asks for just, reasonable and non-discriminatory rates in conformity with the first, third and fourth sections and reparation down to the basis of $2.50 per ton.

No. 11927. E. T. Ladd, Star City, Ark., vs. Gould Southwestern et al.
Against rates on lumber and railroad ties from Star City, Ark., to St. Louis, Memphis, Kansas City and other interstate destinations which are from two to two and one-half cents per 100 pounds higher than the rate on the same kind of traffic from Furth and Gould, Ark., to the same destinations, as unjust, unreasonable and unduly prejudicial. Asks for rates in conformity with the first and third sections, and reparation.

No. 11928. Nolan, Smith & Co., South St. Paul, Minn., vs. Minneapolis, St. Paul & Salt Ste. Marie et al.
Against a rate of 39c on live stock from Winnipeg to South St. Paul as unjust and unreasonable because it represented an increase of 43.75 per cent on the prior rate, while the through rates between Winnipeg and Fort William or Port Arthur, competitive points, were increased only 25 per cent. Asks for reasonable rates and reparation.

No. 11929. Western Brick Co. and Danville Brick Co., Danville, Ill., vs. B. & O. R. R.
Unjust and unduly prejudicial rates on brick and clay products from Danville, Ill., to destinations in Indiana. Asks for reasonable and non-discriminatory rates and reparation.

No. 11930. Oscar Mayer & Co., Chicago, Ill., and Madison, Wis., vs. C. M. & St. P. et al.
Against a rate of 15c on fresh meat, packing house products and by-products from Madison to Chicago, in effect between February 29 and August 26, 1920, and 21c since August 26, as unjust, unreasonable, unjustly discriminatory and unduly preferential, in favor of competitors at Janesville, Jeffersonville and Evansville. Asks for a rate of 14½c and reparation amounting to about $5,000.

No. 11931. Lake Charles Rice Milling Co. of Louisiana vs. Southern Pacific et al.
Alleges that the further control, ownership and operation of steamboats and steamships by the Southern Pacific, Louisiana Western, Morgan's La. & Tex. R. R. & S. S. Co., Texas & New Orleans and the Galveston, Harrisburg & San Antonio R. R. companies, excludes and prevents competition on the routes by water and further control, ownership and operation of steamships by them is not in the interest of the public and of advantage to the convenience and commerce of the people and the rice industry in particular. Asks for an order commanding the defendants to dispose of all interests in what is known as the Morgan Line except a tank steamer for fuel oil for company use from Tampico to Galveston and Algiers; all interest, stocks and bonds of the Franklin & Abbeville Ry. Co. controlling the Franklin & Abbeville Ry. Boat Line, also of all interest, stocks and bonds of the California Transportation Co. operating steamboats on the Sacramento River, and prohibiting the ownership, control or interest in any steamship, steamboat or barge line in violation of Section 5 of the Act to regulate commerce; also an order requiring the defendants to establish joint through rates in connection with steamship lines operating between gulf ports and Atlantic seaboard and also establish joint through rates with any other steamship line that may desire to operate between gulf ports and the Atlantic seabaoard, upon thirty days' notice.

No. 11932. United Verde Extension Mining Co., Jerome, Ariz., vs. A. T. & S. F. et al.
Against a rate of $8.20 per ton on mine run coal shipped between June 25, 1919, and June 8, 1920, from Dawson, N. M., to Clarksdale, Ariz., as unreasonable and unjustly discriminatory and unduly preferential to mines at Gallup, N. M. Asks for a reasonable rate and reparation.

No. 11933. Hazlehurst Oil Mill and Fertilizer Co., Hazlehurst, Miss., vs. E. J. & E. et al.
Against a rate of $13.50 per net ton on sulphate of ammonia from Gary, Ind., to Hazelhurst, Miss., to the extent and because of excess over $6.30 per ton from Chicago to Hazelhurst and $5.55 from Gary to Meridian, Miss., and $5.50 from Gary to Jackson, Miss., as unjust and unreasonable and in violation of the first, third and fourth sections. Asks for reasonable rates and reparation.

No. 11934. Ætna Explosives Co., Inc., New York, vs. Chicago & Eastern Illinois.
Against a rate of 43c on two carloads of glycerine from Kansas City, Mo., to Fayville, Ill., shipped in October, 1919, as unjust and unreasonable in comparison with a rate of 22c on glycerine from Kansas City to Thebes, Ill. Asks for reasonable rates not in excess of those to Thebes, and reparation.

No. 11935. Swift & Co., Armour & Co., Chicago, vs. Fort Worth & Denver City et al.
Unjust, unreasonable and unjustly discriminatory rates on live stock on account of the failure of trunk lines to make proper absorptions of belt line charges. Asks for just and reasonable rates and proper divisions thereof.

No. 11936. Coral Ridge Clay Products Co., Coral Ridge, Ky., vs. Payne, as agent.
Unjust and unreasonable rates on hollow building tile to Charleston, S. C. Asks for cease and desist order and reparation.

No. 11937. Swift & Co. et al., Chicago, vs. Ann Arbor et al.
Unjust and unreasonable rates on butter, butterine, fresh meat and packing house products from Chicago, East St. Louis, etc., to Canadian destinations due to requirement of prepayment of freight bills due to depreciation of Canadian currency. Ask for cease and desist order and the establishment of a rule that will permit prepayment of freight charges on parts of haul in the United States and reparation amounting to about $25,000.

No. 11938. Anderson, Clayton & Co. et al., Oklahoma City, vs. Fort Smith & Western et al.
Against increased service charges on cotton to be compressed, from 10c to 15c per 100 lbs. Cease and desist order and reparation to the basis of the 10c charge.

No. 11939. Hugger Bros. Gravel Co., Montgomery, Ala., vs. Mobile & Ohio et al.
Unjust and unreasonable rates on sand and gravel by reason of refusal of defendants to establish joint through rates from Pruitt, Ala., to points in Mississippi, Georgia and Florida. Ask for the establishment of rates similar to those now in effect from Cooks, Ala., or such other just and reasonable rates as the Commission may deem justified.

No. 11940. Great Lakes Dredge and Dock Co., Chicago, vs. Illinois Central et al.
Unjust, unreasonable and unjustly discriminatory rates on rip rap stone from the Bedford district to the breakwaters in Chicago by reason of the failure of the Chicago, Indianapolis & Louisville and the Chicago, Terre Haute & Southeastern to make a rate on such stone as low as via other routes. Asks for reasonable rates and reparation amounting to about $50,000.

No. 11941. Coma (voluntary association of persons, co-partnerships and corporations engaged in theatrical, show and circus business), Oklahoma City, Okla., vs. St. L.-S. F. et al.
Unreasonable, unjust, discriminatory and prohibitive rates on interstate transportation of show equipment and cars. Asks cease and desist order; that defendants be required to carry all shows, circuses, carnivals, amusements, etc., in cars owned by the shippers upon the same rate prescribed by the Director General during federal control, and which was in effect on Feb. 29, 1920, plus 35 per cent, and reparation.

No. 11942. National Glass Co., Shreveport, La., vs. John Barton Payne, as agent.
Unjust, unreasonable and unjustly discriminatory rate of 77c on eleven carloads of salt cake from Johnson City, Tenn., to Shreveport. Asks for reparation to the basis of 31½c.

No. 11943. Capitol Ice and Storage Co. and Big Four Ice Delivering Co., Oklahoma City, vs. St. L.-S. F.
Against a rate of 36.5c on ice from Joplin, Mo., to Oklahoma City and 28c from Carthage to Oklahoma City as unjust, unreasonable and unduly preferential in favor of Tulsa, Holdenville, Sapulpa, Muskogee, Chandler and other points in Oklahoma. Asks for reparation to the basis of 13c.

No. 11944. Empire Cotton Oil Co., Atlanta, vs. Maxton, Alma & Southbound et al.
Against class E rates on cottonseed from points in North and South Carolina to Cordele, Ga., as unjust and unreasonable. Asks for reasonable rates and reparation.

No. 11945. Arizona Copper Co., Ltd., Clifton City, Ariz., vs. Arizona & New Mexico et al.
Unjust and unreasonable rates on two carloads of old scrap boilers and machinery from Clifton, Ariz., to San Francisco, by reason of the assessment of rates other than those applicable on scrap iron and steel. Asks for a rate of 50c on old, disused, worn-out scrapped boilers and machinery, with 80,000 pound minimum, and reparation.

No. 11946. Tuffli Bros. Big Iron Coke Co., St. Louis, vs. John Barton Payne.
Unjust and unreasonable charge on a carload of smithing coal from Douglas, W. Va., to Los Angeles, Cal., reconsigned at Chicago to Oakdale, Cal., and thence to Los Angeles, because such reconsignment was not accomplished at the through rate of $12.10 from Chicago to final destination. Asks for a cease and desist order and reparation.

No. 11948. The Glacifer Co., Boston, Mass., vs. American Railway Express Co.
Alleges unlawful discrimination against complainant and preference in favor of persons shipping ice cream packed in tubs with ice because practices of express company enable shippers to transport ice cream packed in ice on fictitious weights, while complainant, who manufactures "dry containers for the preservation and shipment of ice cream," is obliged to pay a rate of freight based upon the actual weight of container. Complainant alleges that the "fictitious weights" referred to are less than the actual weights. Asks cease and desist order, just and reasonable rates for the transportation of ice cream in dry containers, and reparation of $500,000.

# Docket of the Commission

**Note. Items in the Docket marked with an asterisk (*) are new, having been added since the last issue of The Traffic World. Cancellations and postponements announced too late to show the change in this Docket will be noted elsewhere.**

November 23—Argument at Washington, D. C.:
11250—Briggs & Turivas vs. Pa. et al.
10831—Matthiessen & Hegeler Zinc Co. et al. vs. C. & N. W. et al.
10756—Edward Hines Lumber Co. et al. vs. B. & O. et al.

November 29—Salt Lake City, Utah—Before Public Utilities Commission of Utah:
* Finance Docket 36—In the matter of the application of the Utah Terminal Ry. Co. for a certificate of public convenience and necessity to construct a line of railroad in Utah.

November 29—Chicago, Ill.—Examiner Archer:
* I. and S. 1224 (and first supplemental order)—Chipboard and strawboard in Western Trunk Line territory.

November 29—Argument at Washington, D. C.:
* 11774—In the matter or intrastate rates, fares and charges in the state of South Carolina.

November 29—Galesburg, Ill.—Examiner Wagner:
I. and S. 1232—Coal from Illinois to Michigan.

November 29—Pittsburgh, Pa.—Examiner Keene:
10197—Avella Coal Co. vs. Pittsburgh & West Virginia and Director General.
10197, Sub. Nos. 1 to 6—Same vs. Same.

November 29—Washington, D. C.—Examiner Barclay:
11567—The Order of United Commercial Travelers of America vs. the Pullman Co.

November 29—Washington, D. C.—Examiner Oberlin:
* Finance Docket 1060—In the matter of application of Moore Haven & Clewiston Ry. Co. for authority to issue $50,000, principal amount, of first mortgage 6 per cent gold bonds.

November 29—Sharon, Pa.—Examiner J. E. Smith:
* 11050—Stewart Iron Co., Ltd. vs. Pa. (Western Lines) et al.
* 11167—Same vs. Pittsburgh & Lake Erie and Director General.

November 29—St. Louis, Mo.—Examiner Money:
* 11710—Tuffli Bros. Pig Iron and Coke Co. vs. Director General.
* 11804—Same vs. Same.

November 30—Chicago, Ill.—Examiner Archer:
* I. and S. 1225—Empty beer and cereal beverage packages and bottles returned.

November 30—Indianapolis, Ind.—Examiner Jewell:
I. and S. 1233—Grain via Indianapolis from T. St. L. & W. R. R.

December 1—Greenville, S. C.—Examiner Gerry:
* I. and S. 1205—Switching and absorption at Paris, S. C.

December 1—Indianapolis, Ind.—Examiner Jewell:
* 11877—Burns & Hancock Fire, Brick and Clay Co. vs. Director General and C. & E. I.

December 1—Carson City, Nev.—Examiner Healy:
* 11914—In the matter of intrastate rates, fares and charges of the Sou. Pac. Co. and other carriers in the state of Nevada.

December 1—Texarkana, Ark.—Examiner Howell:
* 11650—Texarkana Pipe Works vs. Director General.

December 1—Argument at Washington, D. C.:
10745—National Wholesale Grocers Assn. of the U. S. vs. Alabama & Vicksburg et al.
10745 (Sub. No. 1)—Southern Wholesale Grocers Assn. et al. vs. Sou. et al.

December 1—Indianapolis, Ind.—Examiner Jewell:
* 11908—Hydraulic-Press Brick Co. vs. Director General and Chicago & Eastern Illinois.
* 11908 (Sub. No. 1)—National Fire Proofing Co. vs. P. C. C. & St. L. et al.

December 1—Louisville, Ky.—Examiner Kephart:
* 11885—West Kentucky Coal Bureau vs. Ill. Cent. et al.

December 1—St. Louis, Mo.—Examiner Money:
* 11907—Cotto-Waxo Co. et al. vs. Ann Arbor et al.

December 1—St. Louis, Mo.—Examiner Money:
* 11891—Mississippi Valley Iron Co. vs. Mo. Pac. et al.

December 2—Argument at Washington, D. C.:
10826—Intermediate Rate Assn. vs. Aberdeen & Rockfish et al.

December 2—Springfield, Mo.—Examiner Wagner:
* 11903—McGregor-Noe Hardware Co. vs. St. L.-S. F.

December 2—Kalamazoo, Mich.—Examiner J. E. Smith:
* 11887—The Upjohn Co. vs. Grand Trunk Western et al.

December 2—Atlanta, Ga.—Examiner Gerry:
* 11869—Empire Cotton Oil Co. vs. C. of Ga. et al.

December 2—Springfield, Mo.—Examiner Wagner:
* 11737—E. M. Wilhoit Oil Co. et al. vs. Director General.

December 2—Atlanta, Ga.—Examiner Gerry:
* 11870—Empire Cotton Oil Co. vs. Alabama, Florida & Gulf et al.

December 2—St. Louis, Mo.—Examiner Money:
* 11890—Sligo Coal Co. vs. Mo. Pac. et al.
* 11664—The Aluminum Ore Co. vs. Director General.

December 3—St. Louis, Mo.—Examiner Money:
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### C. & O. STOCK ISSUE

The Chesapeake & Ohio Railway Company has applied to the Commission for permission to issue from time to time, but not later than April 1, 1936, common capital stock now held in reserve in an aggregate par amount not exceeding $50,225,000, to be used in conversion of and in exchange for convertible secured bonds of the company.

### WANTS TO BUILD NEW LINE

Application for a certificate of public convenience and necessity authorizing it to construct and operate a standard line of railroad from New Castle to Breckenridge, Texas, has been filed with the Commission by the Wichita Falls & Southern Railroad Company. The proposed line of railroad would be approximately 44 miles long, the applicant states, and it is necessary to aid in the development of oil and coal production in and around New Castle and Breckenridge. The line would make connection with the Wichita Falls & Southern's line at New Castle.

### FEDERAL VALLEY NOTE ISSUE

Application for authority to issue notes to the extent of $27,940 is asked by the Federal Valley Railroad Company, of Ohio, in an application filed with the Commission. The purpose of the issue is to finance the purchase of one locomotive and one caboose.

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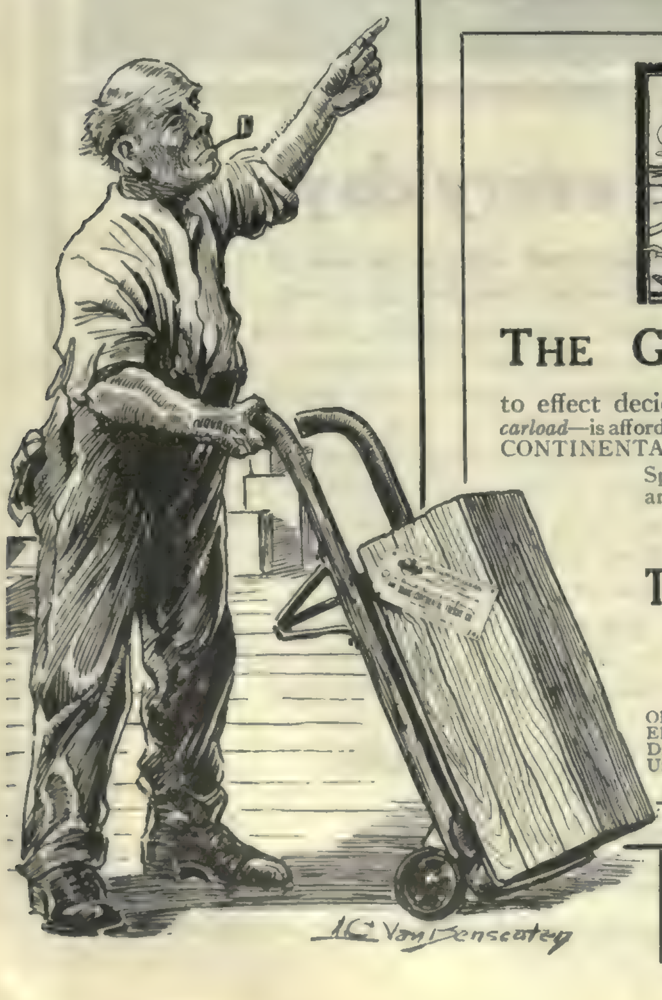

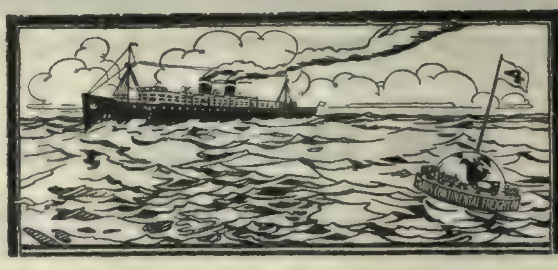

# The Traffic World

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A working tool for traffic men, both industrial and railroad; a national journal of transportation news; independent as between carrier and shipper

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## GOVERNMENT RED TAPE

Government red tape is preventing the collection by the carriers of sums due them under the guaranty provisions of the federal control law. The Interstate Commerce Commission is willing to make partial payments, but the Comptroller of the Currency has taken the position that he is not authorized to honor warrants for payments until the entire amounts due are certified by the Commission. Final settlement will consume many months. In the meantime the carriers are deprived of money justly due them and the shipping public is deprived of improved transportation facilities that would result from the expenditure of this money by the carriers if they could get it. The case is not only one of injustice to the carriers and deprivation of shippers of the transportation efficiency they desire and expect, but of muddling by bureaucratic methods. There is no reason why government should not do things in a businesslike manner if it wished to do so. Here is a chance to cut some red tape and remove part of the stigma that attaches to our government's way of transacting business. We have no doubt but that the Comptroller of the Currency could be compelled to find a way, without violating any law, of paying money to those to whom it is due.

## JURISDICTION OVER STATE RATES

The Interstate Commerce Commission, in the decision written by Commissioner Ford in the New York case, certainly meets squarely the issue as to whether the law gives it authority over intrastate rates in their relation to the general level of rates fixed by the Commission under the new transportation act. The decision is brief and very much to the point. One may quarrel with it if he wishes, but he cannot find fault with it on the ground that it is not clear and frank.

Commissioner Eastman, in a dissenting opinion, does quarrel with it. He says that if Congress had meant the Commission to exercise the power it has attempted to exercise in this matter of state rates, it would have said so in plain and unmistakable terms. We think it has said so in such terms and we think anybody except one with preconceived notions of what ought to be and an inclination to bend the facts to that view, would think so. We do not see how it could well have been more explicit unless it had assumed that there would be dispute on the point and had undertaken to meet argument by answering specific questions. We wonder how plain language would have to be to be understood by Mr. Eastman and those who think as he does. That one may contend that Congress has no constitutional power to do what it has done or that it ought not to have done so, we can understand, but how one can hold that Congress has not given the Interstate Commerce Commission this wide jurisdiction or that its exercise is not necessary in order to make the transportation act a working success, is beyond us. If Congress has not given the Commission this power, it has done a poor job in making a law for the regulation of rates for the rehabilitation of the carriers.

Of course, the case will finally go to the Supreme Court of the United States. In the mean time we hope temporary legal processes will operate to assure the carriers the full amount of the revenue the Commission meant to provide.

## CONSOLIDATION OF RAILROADS

Serious attention is now being given to the problem of how the Interstate Commerce Commission shall obey the instructions of Congress in the matter of compelling consolidations of railroads. Of course, the Commission must do as it is told and we have no doubt it will act as wisely as possible under the circumstances. We have no doubt, either, but that it will have the benefit of wise counsel from both the carriers and the shipping public. The consolidations must be made to conform, as nearly as possible, to the demands of transportation. They must not be made for financial reasons, solely or primarily.

Our own idea, however, of the solution of this problem is that that part of the transportation act ought to be repealed. There should be no compulsory consolidation of railroads. Voluntary consolidation ought to be provided for under the sanction of the Commission, but that is as far as we should go.

The provision for compulsory consolidation was

inserted merely as a sop to the advocates of government ownership or operation. Sometimes such sops are necessary, in the interest of expediency, but we are opposed to them on principle. It will, in our opinion, prove to have been an effective sop, if it is allowed to become effective, for it is a short step from consolidation into a few great systems to consolidation into one system and from such unification to ultimate government operation. We think the other provisions of the law go far enough in permitting unification of operation under the guidance of the Commission in times of emergency and that there should be no further departures from competitive principles. The need is for more competition, more initiative, and more "pep"—not less.

Generally speaking, the more competitive lines we have the better for the transportation of the commerce of the country. There is something of loss in duplication of effort, but that loss is compensated for by improved service. We hope that at the next session of Congress, in the consideration of inevitable proposals to amend parts of the new law that may seem to need polishing, there will be serious attention given to the suggestion that the compulsory consolidation provision be stricken out of the act.

## SHIPPER AND CARRIER CO-OPERATION

There is no doubt but that the action of shippers taken at a meeting in Chicago October 22, at which resolutions criticising the carriers were adopted—whatever its purpose or the motives behind it—has operated to clear the atmosphere, which was becoming somewhat overcharged. There was need of a storm and the shippers furnished it. The carriers were aroused by this forceful presentation of feeling and they appeared in force at the meeting of the National Industrial Traffic League in New York with a supply of olive branches.

It matters not now how the situation came about that gave rise to the dissatisfaction expressed by the shippers. No doubt some railroad men responsible were trying to "put things over," as charged. No doubt others, though their intentions were not ill, had permitted this sort of thing without giving due thought to its consequences or even really appreciating what was going on. Doubtless others were doing only what they thought was right and proper, even if cognizant of all the conditions. No doubt, on the other side, some shippers were actuated by selfish motives and a disposition just as grasping as that displayed by some carriers to get "all that was coming to them." Many shippers can never see the carriers' side of a proposal. But the fact is that the situation had come to be delicate. Shippers, either justly or unjustly, had come to feel that they were being taken advantage of by the carriers and such entente cordiale as there was was in danger of being broken. The carriers acted promptly and wisely.

As the matter now stands a committee representing the carriers of the entire country will meet a committee of the Traffic League, headed by President Chandler, and talk over all the grievances of the shippers in the spirit of frank co-operation. If the meeting is held in that spirit on both sides there cannot fail to be agreement and good feeling. It has been our experience and observation that there is always a right and a wrong and that when a group of men representing both "sides" of a proposition meet with a genuine desire to ascertain that right or wrong they can always find it. Having found it, it is easy to act. It has been our experience also that, though there are crooked-thinking and unreasonable men on both sides, most men are honest, straight-thinking, and reasonable. Given a joint committee of such men, we see no reason why out of this recent upheaval there should not come a period of splendid understanding and co-operation between carriers and shippers.

There is one thing certain—there must be this sort of co-operation or the transportation act under which we are trying to bring about a rehabilitation and efficient operation of our transportation system, will be a failure. If the carriers are to seek by devious ways to get more than has been intended they will wreck the scheme. If shippers, on the other hand, are to be baiters of the railroads and object to proper and necessary efforts to get adequate revenue and to do things in orderly fashion, they, too, will be boring a hole in the bottom of the boat. There must be co-operation. Co-operation does not mean criticism by shippers every time the carriers propose something, merely because it is a carriers' proposal. Neither does it mean that the carriers shall make their plans without consultation with the shippers and then lay them before the latter and ask them to "co-operate" by giving their endorsement. It means talking the thing over together from start to finish. If there should be final disagreement—as there might be, in some cases, even with the frankest spirit of co-operation—there is always the Commission to decide a friendly dispute.

We think, as far as the carriers are concerned, the consummation of such a co-operative scheme would be much simplified if the traffic departments of the railroads always had full power to initiate and to carry to conclusions negotiations concerning traffic. We think the remarks of the railroad traffic men at the Traffic League executive committee meeting, of Archibald Fries at the business meeting of the League, and of Lewis J. Spence at its banquet, are in point. They talked the frankest of good sense and good fellowship. Mr. Spence, always clear, forceful, and upstanding, said just the needed word. All railroads are not so fortunate, either in the kind of men at the head of their traffic departments or in the form of organization with respect to the latitude allowed such departments. But on the traffic departments should rest the entire responsibility. If it rested there we believe there would be comparatively little trouble. Technical men cannot usually do business in a businesslike manner. They want certain results and the results are all they see. What is needed, after the granting of full authority to the traffic departments, is the establishment of a liaison between the National Industrial Traffic League and a traffic body representing all the carriers, with power to act for them, in so far as any committee may act for the individuals appointing it. The Traffic League is worthy of this

consideration from every point of view and the transportation situation demands it. We hope some such thing is not far off.

## LOANS FROM REVOLVING FUND

*The Traffic World Washington Bureau*

Holding that, under a literal interpretation of paragraph (b) of section 210 of the transportation act, the majority of railroads would be unable to qualify for loans from the $300,000,000 revolving fund, the Commission, through Division 4, in Finance Docket No. 2, has decided that the inability contemplated by the act "is a practical inability to be determined upon the facts of each case."

The decision of the Commission is the final outcome of the action of the Treasury Department in holding up the payment of loans to carriers on certificates issued by the Commission for the reason that the carriers could not obtain necessary funds elsewhere "except at excessive rates of interest." The treasury took the position that, as the wording of the act was that the carrier "is unable to provide itself with the funds necessary for the aforesaid purposes from other sources," certificates issued on the ground that the applicant could not obtain funds elsewhere except at excessive rates of interest were not in accord with the law.

The Commission said that in order to give force to the statute it must be held that an excessive rate of interest constitutes one of the elements of inability involved. The effect of the decision is that the Commission may certify loans for the reason that the applicants can not get the money except at excessive rates of interest but the certificates will state the wording of the law.

An extended hearing on the questions involved was held before the Commission in September.

The report of Division 4 follows:

"The matter of loans from the revolving fund created by paragraph (e) of section 210 of the transportation act, 1920, to carriers by railroad subject to the interstate commerce act being under consideration, we issued, September 16, 1920, an order for a hearing on September 23, 1920, in the matter of the proper interpretation of paragraphs (a), (b) and (c) of section 210, as amended by section 5 of the sundry civil appropriations act, June 5, 1920, particularly the finding required by the concluding clause in paragraph (b) as thus amended, to wit:

that the applicant, in the opinion of the Commission, is unable to provide itself with the funds necessary for the aforesaid purposes from other sources.

"It was urged on behalf of the carriers and others who appeared before us, that

(1) The legislative intent of section 210 of the transportation act, 1920, was to aid the railroads of the country in increasing their equipment and other facilities as rapidly as possible and thereby enable them properly to serve the public during the transition period immediately following the termination of federal control.

(2) The legislative intent in the requirement of a finding "that the applicant, in the opinion of the Commission, is unable to provide itself with the funds necessary for the aforesaid purposes from other sources," was to give preference to the financially weak railroads; but if for any reason the weaker railroads can not or do not avail themselves of the preference, the fund would be available to the stronger lines, pursuant to the general purposes of section 210.

(3) If the financially strong railroads cannot obtain funds from the general investing public without paying an excessive rate of interest or submitting to some other unduly burdensome condition or taking a risk in respect of their financial structures, not justifiable in the exercise of a sound business and financial discretion, it would be clear that such railroads are unable to provide themselves with the funds necessary from other sources, and in such cases we would be justified, upon a proper showin~ by the applicant, in making the finding required by the concluding clause of paragraph (b) of section 210 of the transportation act, 1920, as amended, namely, "that the applicant, in the opinion of the Commission, is unable to provide itself with the funds necessary for the aforesaid purposes from other sources."

"It was undoubtedly the legislative intent that the railroads should be enabled, through loans made under section 210 of the transportation act, 1920, as amended, expeditiously to move the commerce of the country, to meet maturing capital obligations and otherwise properly to serve the public during the transition period of two years immediately following the termination of federal control.

"The majority of the railroads would not be unable to obtain funds on some terms, provided they agreed to burden themselves and their patrons for a term of years with unusual and excessive rates of interest. The rate of interest which an individual railroad may be required to pay is the market rate for a railroad of its class.

"Under a literal interpretation of the concluding clause of paragraph (b) of section 210 of the transportation act, 1920, as amended, the majority of railroads would be unable to qualify for loans. The remainder of the railroads, while able to make the showing that they are unable to obtain funds from other sources, generally cannot make the further showing required by the statute that 'the prospective earning power and the character of the security offered are such as to furnish reasonable assurance of the applicant's ability to repay the loan within the time fixed therefor and to meet its other obligations in connection with such loan.' Under these conditions it would be practically impossible to make any loans, and section 210 of the transportation act, 1920, as amended, would be reduced to a nullity.

"In order to give force and effect to the statute, the inability to obtain funds from other sources must be construed as an inability to secure funds upon terms which the carrier with due regard for the public interest would be justified in accepting, and it must be held that an excessive rate of interest or other unduly burdensome or injurious conditions which the exercise of sound business discretion will not permit, constitute inability, within the meaning of the statute, to obtain funds from other sources.

"We find that inability to obtain funds from other sources contemplated by the concluding clause of paragraph (b) of section 210 of the transportation act, 1920, as amended, is not an absolute inability, but a practical inability or inability within the exercise of sound business discretion in the public interest to be determined by the consideration of the facts of each particular case. Complete and concrete statements of such facts should be furnished by applicants showing their efforts to obtain the necessary funds from other sources and the result of such efforts and if they have already employed their credit, how a further recourse thereto would affect them."

## TARIFFS SUSPENDED

*The Traffic World Washington Bureau*

In I. and S. No. 1240, the Commission has suspended, until March 22, the operation of schedules proposing the cancellation of and increase in water competitive rates on lumber and articles taking same rates, carloads, from various shipping points in the Carolinas, Georgia, Florida, Virginia and eastern Alabama to Baltimore, Md., Philadelphia, Pa., New York, N. Y., Boston, Mass., and points taking same rates, the following being typical examples of the present and proposed rates:

In cents per 100 pounds—To

| | Philadelphia, Pa. | | New York, N. Y. | | Boston, Mass. | |
|---|---|---|---|---|---|---|
| From— | Present. | Proposed. | Present. | Proposed. | Present. | Proposed. |
| Sevier, N. C. .... | 35½ | 38 | 40½ | 45½ | 44½ | 48 |
| Conway, S. C. ... | 32½ | 35 | 37½ | 42½ | 41½ | 45 |
| Live Oak, Fla... | 37½ | 41½ | 44 | 47½ | 47½ | 51½ |
| Albany, Ga. ..... | 37½ | 41½ | 42½ | 50 | 46½ | 51½ |

In I. and S. No. 1241, the Commission has suspended, from November 22 until March 22, schedules publishing increased rates on grain and grain products from Mississippi and Missouri River crossings and other producing points to points in Arkansas, in Missouri Pacific Railroad Company tariffs, I. C. C. Nos. A-4616, A-4623, A-4624 and A-4627, and St. Louis Southwestern Railway Company tariffs, I. C. C. Nos. 3856 and 3857.

The following statement shows the present and proposed rates in cents per 100 pounds on grain from and to representative points, viz.:

| | From St. Louis. | | From Kansas City. | |
|---|---|---|---|---|
| To— | Present. | Proposed. | Present. | Proposed. |
| Eudora, Ark. .................. | 43 | 43½ | 48½ | 49 |
| Hot Springs, Ark. ........... | 43 | 43½ | *54½ | *55 |
| Prescott, Ark. ................. | 44½ | 45 | 37 | 37½ |
| Dermott, Ark. ................. | 40½ | 41 | 38 | 38½ |

*Cereal products.

In I. and S. No. 1242, the Commission has suspended until March 22, 1921, the operation of schedules providing for increased commodity rates on grain and grain products, carloads, from St. Louis, Minneapolis, Chicago and Peoria and points taking same rates to Kansas City, Mo., the following rates being typical from the representative points named:

In cents per 100 pounds.

| | Present. | Proposed. | Increase. |
|---|---|---|---|
| Chicago .............................. | 25 | 27.5 | 2.5 |
| St. Louis ............................ | 20.5 | 22.5 | 2 |
| Peoria ................................ | 22.5 | 25 | 2.5 |
| Minneapolis ........................ | 25 | 27.5 | 2.5 |

In I. and S. No. 1244, the Commission has suspended from November 24 until March 24 the operation of the proposed cancellation of rates on coal, carloads, from mines in Kentucky and Tennessee to Atlanta, Ga., via Cartersville, Ga., and the Western & Atlantic Ry., published in Supplements Nos. 35, 36 and 37 to Louisville & Nashville R. R. Co. tariffs I. C. C. No. A-14167. The effect of the proposed cancellation will be to force the payment of an additional switching charge of 30 cents per net ton, less $2.50 per car, by the consumers located more than three miles from the point of interchange of the L. & N. R. R. with the Southern Ry.

In No. 1246, the Commission has suspended from November 25 until March 25, Great Northern I. C. C. Nos. A5236 and A5237. The suspended schedules provide for an increase from $6.50 to $8 per car in the switching charges on carload freight between South Tacoma, Wash., on non-competitive interstate traffic originating at or destined to stations on the Great Northern Railway in Washington, Idaho, Montana, North Dakota, South Dakota, Iowa, Wisconsin and Minnesota.

# Current Topics in Washington

**Investigation of the Shipping Board.**—Allegations that there has been grafting and bribery among officials and employes of the Shipping Board do not produce that degree of consternation and indignation that such things excited a dozen years ago. In the Shipping Board there is more or less of moaning, not so much that the honesty of officials and employes has been questioned, but lest the charges produce a bad effect in foreign countries. One newspaper, the correspondent for which specializes on Shipping Board matters, wrote such an article about the thoughts of those in the Board that his editor felt constrained to say that officials of the Board feel that the investigation of the Walsh committee "may hurt shipping," and that the "prestige of the American merchant marine" may suffer serious injury abroad. According to the same authority the Shipping Board officials assert that little new has been disclosed and that they have investigated and exploded most of the rumors and charges made by the investigators of the Walsh committee. Admiral Benson is authority for the assertion that the Board knew about the insinuations that Treasurer Bolling had been bribed in connection with some matter in which the Downey shipbuilding company was interested, but had investigated and come to the conclusion that there was nothing to the allegation that would make it inadvisable for the Board to appoint him treasurer. The officials are represented as being almost sorry for the Walsh committee in allowing itself to be made the clearing house for "unfounded charges preferred by individuals having a grievance against the Shipping Board," or officials with whom they have had dealings. They are also represented as holding that the committee has not pursued the proper course in holding hearings in Philadelphia and New York and then giving the officials of the Board an opportunity to answer the charges. While the officials of the Board are represented as having these impressions about hurt to American shipping and pity for the investigating committee for alowing itself to be used as a clearing house for rumors, it is certain Washington has not any definite impression that the Board is being abused. Washington is inclined to argue that the Board had an opportunity to prevent criticism. Instead, it held ex parte investigations and generally concluded that there was nothing seriously wrong, though the Comptroller of the Treasury told it that it had disbursed a billion dollars without observing the first rule of accounting—requiring papers in support of claims and data to show why money had been paid out. In a way, however, Washington is callous because stories of grating have been common as to speculations in the stock market by men influential in the councils of the administrations who have not been rebuked by President Wilson. Neither President Wilson nor anyone speaking for him has persistently asked, "Where did you get it?" when some friend of the administration has shown signs of affluence.

**Holding Up Nominations.**—The opinion of Senator Jones of Washington that the President's nominees for the Shipping Board will not be confirmed by the Senate is regarded as a declaration by at least one influential supporter of the incoming President that the expected hold-up of nominations will materialize. No one is expected to make any charges against any of the nominees, so the hold-up will be purely political, unless there is a radical change in the program. In the general chorus of disapproval of the Shipping Board, there is not even the excuse that, regardless of its shortcomings, it delivered the ships. Shipping Board ships did not begin coming from the ways until after the signing of the armistice. The best that is being said of it is that its vast preparations to do something, its enormous expenditures of money, and its figures as to the tonnage it would have in 1920 and the following year, had a psychological effect on the enemy and hastened the crumbling of his military machine.

**Politics in Intrastate Fare Case.**—While the Commission's special sixth section permission under which the carriers in New York will issue supplements raising intrastate rates in New York in accordance with the decision in the New York passenger fare case is expected to force the state governments to go into court, it is not certain that, on account of local situations in various states, some attempt at political action will not be made. For instance, the New York Board of Estimate, November 22, adopted a resolution protesting against the increase of fares on the Long Island on the ground that that road is operated "solely for intrastate traffic." The Board of Estimate is the budget committee for Greater New York. That board exercises fiscal power over the whole of New York City and, in a way, it may be said to have been acting for the commuters in the whole Metropolitan District. The Commission reserved commutation fares for further consideration. There are fares on the Long Island road that will be raised which, it is believed, will not come under the head of commutation fares. New York and New Jersey members of the House, on other matters, have acted in behalf of their constituents to prevent increases in fares. The New York and New Jersey votes in the House of Representatives against that part of the Interstate Commerce law under which the Commission made its decision would be a big nucleus around which to gather representatives from other populous centers that might think they would be adversely affected by an extension of the power over rates which heretofore have been influenced, if not controlled, by local authorities. A large percentage of the members of the House are dependent for political support on the votes of communities like New York, Philadelphia, Boston, Chicago, Cincinnati and St. Louis. Nothing is quite so prompt as a representative who thinks the pocket nerve of his constituents is being hurt by even a five-cent increase in fares to and from work in the city. Party lines are forgotten when such things come up.

**Renewed Talk of Government Operation.**—The difficulties of the New England roads in making ends meet has served to renew talk about government ownership and operation of railroads, as if the government could more easily meet the burdens placed on the carriers by the McAdoo agreements about wages and the increase in the cost of materials and supplies. The national agreements with fourteen labor organizations, it was pointed out by President Alfred, of the Pere Marquette, have materially increased labor costs. In the passion for uniformity the engine driver on a little branch line, with smaller living expenses than the engine driver in a big city, has obtained about the same wage. The machinist in the shops at Crestline, O., has received about the same as the machinist who has to live in New York. Prior to the fourteen national agreements in behalf of uniformity, the wages were graded in accordance with the cost of living, as nearly as possible. The typographical union, one of the most successful labor organizations in the country, it has been pointed out, does not insist on the same scale of wages for its members throughout the country, any more than the country doctor thinks of charging fees as high as his city brother. It is the testimony of representatives of shippers in the South that the high wages decreed to employes in small communities demoralized the recipients more than anything that ever happened before. But the McAdoo-Hines regime made the agreements and, thus far, no railroad executive has devised a way for telling the men in the smaller communities that, unless they are willing to accept a revision of the scale, the railroad company and the unions are both likely to go to pot and the country decline to help either.

**Time Taken by the Commission to Consider Cases.**—The long time taken by the Commission for the consideration of the application of the American Railway Express Company for permission to continue as a consolidated concern reminds one of the days, not so long ago, when eight months was about the average of time taken by the Commission for the decision of a case. In those days it issued what were known as unreported opinions, analagous to per curiam decisions by the Supreme Court, except that the unreported opinions were really opinions. They were not counted in a calculation that the average time for a decision was about eight months. Now the average would be much lower, because unreported opinions have been abolished. The abolition took place when some one found an unreported opinion that raised a great stir because it violated the essential fact on which all unreported opinions were supposed to be founded—that those decisions followed so closely the reasoning in other cases that there was no necessity for taking them matters of printed record. The fact that there are only ten commissioners at work has suggested an equal division with regard to the application of the express company. The law makes no provision for such a contingency because it makes provision for an odd number of members. So few cases come up in which a commissioner feels constrained to reverse himself that failure of a majority to arrive at a conclusion has never troubled the Commission. When the Supreme Court divides evenly the decision of the lower tribunal stands. There is no lower tribunal in the regulation of railroad rates, rules, and practices, wherefore there is no rule for the suggested situation.

**Rates and Volume of Traffic.**—The recession in commodity prices, it has been suggested, will soon afford a test of the declarations of shippers in the last three or four years that such and such rates on a given commodity will result in a reduction of the volume of business in them—that the rates will prevent the free movement of traffic. Six or eight years ago every railroad traffic manager, in attempting to justify a rate, felt it incumbent on him to point to a free movement of traffic thereunder as one fact tending to show that the rate was not unreasonable. Ever since the European war got into full swing until immediately after the armistice and in the last few weeks, there has been such a large tonnage that the phrase about the free movement has disappeared from the vocabulary of traffic managers. No representative of a shipper has been able to point out that there has been a lessening of the volume

of traffic in a particular kind of goods. Last year the revival of business came in such a comparatively short time that there was hardly opportunity to use the phrase; besides, Director-General Hines refused to make an increase in rates even when the returns tended to show that, if high rates are the infallible cure for insufficient revenue, the time had come for making an increase to supplement the one that was made by his predecessor and which was shown to be insufficient, even when the volume of traffic was higher than could be comfortably handled.

**No Further Rate Advance Contemplated.**—The Washington correspondent of a newspaper is an enterprising man, able and willing to see far into the future, but in the matter of railroad rate increases in the immediate future it is believed the inference-drawing part of his mentality has been working too freely. When he saw the poor showing of earnings of the railroads in September, he jumped to the conclusion that there must be another increase in rates. Daniel Willard, as the head of the Association of Railway Executives, on account of reports published in his own city of Baltimore, felt constrained to put out a statement on Nevember 20, saying that there was no increase in rates in contemplation. At the conference in regard to divisions for New England railroads, he reinforced his statement on that point by saying that the rates put into effect August 26 had not had a trial and that changes in them ought not to be contemplated until there had been a trial. But the inferences of the Washington correspondents are not half as startling as the reports about rates that have been put into circulation by real estate agents in Washington as part of their selling campaign for houses recently built on which prices may have been shaded a bit. The agents for one firm solemnly informed prospective purchasers that their firm was able to make such a low price because, in the early part of the summer, the railroads had refused to forward freight because they wanted it held up, so they could collect the higher rates they knew they would be permitted to charge. After the higher rates were decreed, the agents said, such a flood of stuff came forward that his firm was able to buy materials in a congested market considerably below the level of prices prevalent in the earlier part of the building season. Prospective buyers, not having read the reports about enormous tonnages moving in July and August, and being unfamiliar with the rule that the rate in effect at the time the freight is accepted is the one that may be collected, seemed to swallow the tale. At least, some of the houses in question were sold at prices that seemed a little below the market. A. E. H.

## OBJECTS TO C. B. & Q. PLANS

*The Traffic World Washington Bureau*

Objection to the application of the Chicago, Burlington & Quincy for authority to issue $60,000,000 additional capital stock and $109,000,000 of 6 per cent first and refunding mortgage bonds, upon which hearing was begun before W. A. Colston, director of the bureau of finance of the Commission, November 22, was made by Robert J. Frank, an attorney of Chicago, and a minority stockholder of the C. B. & Q.

In a letter to Director Colston, Mr. Frank said:

"My objection to the financing referred to in the above application is (a) That it is not in any sense proposed in the interest of the Burlington railroad, but to enable two competing roads to pay for the stock of the Burlington purchased in 1901 with joint bonds of the Great Northern and Northern Pacific railroad companies; (b) That no reason can be shown why the Burlington railroad should issue any bonds for its own purposes; (c) That if additional capital stock is to be issued, the surplus shown to exist should be substantially capitalized only in this manner in the interest of the Burlington Corporation, the public and its stockholders; (d) That no financing of the Burlington should be permitted that has for its object the renewal or further continuation of the arrangement entered into in 1901 as shown by the Trust Indenture between the Northern Pacific and Great Northern Railway Companies and the Standard Trust Company of New York (subsequently known as the Guaranty Trust Company of New York), dated July 1, 1901, for the reason that to do so would be in violation of the provisions of the transportation act of 1920."

"My interest and activity has been prompted by the fact that I own fifty shares of Burlington stock, paid for with real money, and it means a great deal to me," Mr. Frank said in other correspondence with Director Colston. "Besides, I believe it is the duty of some one to take the stand I have, and have felt a professional pride in so doing, for I am satisfied that the recent attitude of the public in regard to common carriers has been brought about by numerous transactions, such as I regard this to be."

Mr. Frank said he desired to suggest that "the real purpose of this proposed financing is but a preliminary step to the refunding of the two hundred and fifteen million of what are commonly known as C. B. & Q. Joint 4 bonds of the Great Northern and Northern Pacific railroads, which fall due in about six months' time, and that you undoubtedly get some enlightening information on that subject by calling upon the Department of Justice to provide you with information which it gathered during the year 1917 when an investigation was carried on as a result of a complaint filed by me in 1916, asking that suit in equity under the Sherman law be brought to restrain the Great Northern and Northern Pacific Railroad Companies from further voting the Burlington stock deposited as collateral for the said C. B. & Q. joint 4 bonds, and from further dominating the management and operation of the Burlington, a competitor of both roads.

"I believe that upon investigation it will appear to the Commission that this proposed financing, as well as the refunding of the bond issue above referred to, is for the purpose of perpetuating a relation between these railroads that is in direct violation of the transportation act, 1920; namely, in that no actual competition can exist where the two railroads (the Northern Pacific and the Great Northern) jointly, substantially own the Burlington, and that it would be necessary for one of the two roads to relinquish its control before any permission was given, in any event," Mr. Frank said.

Detailed explanation of the growth and financial operations of the Chicago, Burlington & Quincy was given before W. A. Colston, director of the bureau of finance of the Commission, the afternoon of November 22, by Hale Holden, president of the road, in support of the application for authority to issue $60,000,000 of additional capital stock and $109,000,000 of bonds. Commissioners Daniels and Potter attended the hearing.

Mr. Holden said one of the principal reasons for the application was that the company "requires a broader base for future financing." He said the investment in road and equipment as of August 31, 1920, was $503,745,837.57, and that the total property investment was $546,652,171.46.

The issuance of $80,000,000 of bonds (it being the plan of the company to issue that much of the $109,000,000 at the present time) would add $4,800,000 to the annual interest charges of the company, Mr. Holden said, the bonds to bear 6 per cent interest.

He said the plan proposed in the application would bring the capitalization of the company more nearly to the actual value of the property and remove misunderstanding due to the present "abnormally low capitalization."

He added that the plan provided a "modern and far better financial structure" for the company.

Among those who entered appearance at the hearing were Morton T. Culver, assistant attorney-general of Illinois; W. M. Hammond, chief accountant of the public service commission of Illinois; Glenn E. Plumb, counsel for the organized railway employes; Robert J. Frank, of Chicago, a protesting minority stockholder; and John E. Benton, general solicitor of the National Association of Railway and Utilities Commissioners.

Eighty million dollars of the $109,000,000 bond issue for which the C. B. & Q. is asking the approval of the Commission will be dated February 1, 1921, and sold, and the receipts will be turned over to the stockholders of the road in the form of cash dividends, Mr. Holden explained at the hearing on the application. If the Commission approves the application, therefore, the stockholders will get that cash dividend in addition to the stock dividend of $60,000,000. The remainder of the $109,000,000 issue will be held in the company's treasury to be used in the future for additions and betterments.

Director Colston inquired whether the company had considered issuing a larger amount of stock than $60,000,000 and a smaller amount of bonds. He suggested that $90,000,000 of stock might be issued and the bond issue reduced. Mr. Holden said the judgment of the financial advisers of the company was that the plan outlined in the application was best to put the financing of the company on a proper basis.

A great amount of statistical data was submitted by Mr. Holden in response to a questionnaire prepared by the Commission.

Benjamin Marsh of the Farmers' National Council sent in a letter of protest against the application, charging, in effect, that the Burlington was attempting to capitalize the increased value of its lands. Mr. Holden stated the company was not attempting anything of the sort—that it was asking permission to capitalize actual cash which it had put into the property and that it was not seeking to capitalize the increased value of the company's property due to its growth or other conditions.

The Nebraska state commission notified Director Colston that it would appear as a protestant against the application. Mr. Benton, for the state commissions, did not indicate what his position would be. Director Colston announced a further hearing would be held to permit cross-examination of Mr. Holden by the protestants and the offering of testimony by protestants.

Protestants against the application of the C., B. & Q. will be heard by Director Colston, December 14, it was announced by the director at the conclusion of the presentation of the company's testimony December 13. Mr. Holden, president of the company, will appear at that time for cross-examination.

# Decisions of Interstate Commerce Commission

## NEW YORK RATE CASE

**CASE NO. 11623** (59 I. C. C., 290-304)

IN THE MATTER OF RATES, FARES AND CHARGES OF THE NEW YORK CENTRAL RAILROAD COMPANY AND OTHER RAILROAD COMPANIES IN THE STATE OF NEW YORK.

Submitted October 11, 1920. Opinion No. 6452.

Certain fares, charges, and rates required by state authority to be maintained by the respondents within the state of New York found to be lower than the corresponding interstate fares, charges, and rates authorized by the order in Ex Parte 74, Increased Rates, 1920, 58 I. C. C., 220, and to be unduly prejudicial to interstate passengers and shippers, unduly preferential of intrastate passengers and shippers, and unjustly discriminatory against interstate commerce.

FORD, Comissioner:

In pursuance of our findings in Ex Parte 74, Increased Rates, 1920, 58 I. C. C., 220, we authorized within a region that includes the state of New York an increase of 40 per cent in the interstate freight rates; 20 per cent in the interstate passenger fares, baggage charges and rates on milk and cream; and also a surcharge amounting to 50 per cent of the charge for space in sleeping and parlor cars, to accrue to the rail carriers.

Thereupon the steam railroad companies serving the state of New York made formal application to the Public Service Commission of the State of New York, Second District, for permission to file, effective on five days' notice, tariff supplements providing increases in the rates, fares and charges applicable to intrastate traffic in the state of New York corresponding with those authorized in our report. So far as the application related to rates and charges for the transportation of freight except milk it was granted by the Public Service Commission, by an order entered August 19, 1920, and the increases became effective August 26, 1920, contemporaneously with the increases in interstate rates. But so far as it related to passenger fares, sleeping-car and parlor-car fares, baggage charges, and rates on milk and cream, the application was denied by the Public Service Commission. Thereafter the principal steam railroads serving the state of New York filed with us a petition for relief in accordance with the provisions of section 13 of the interstate commerce act. A hearing upon the petition has been held, and the views of parties in interest have been presented to us on brief and by oral argument.

This case raises again the question whether in regulating interstate commerce, under authority reposed in us by Congress, we have incidentally the power of regulating intrastate commerce so far as it affects interstate commerce. In the Shreveport Case, 23 I. C. C., 31, we held that we did possess that power by act of Congress, and we pointed out:

> Congress passed this act with full knowledge and profound appreciation of those decisions of the Supreme Court in which it had been held that state commerce was that wholly within a state "and not affecting interstate commerce," as is fully shown by the Cullom report of 1886, out of which grew the act to regulate commerce.

The position we took was sustained by the United States Supreme Court, and the principle on which we acted then continues to be our guide. But since then the general obligation resting upon us to exercise control over intrastate commerce so far as it affects interstate commerce has been put in the form of a mandate by section 13 of the interstate commerce act, as amended by the transportation act, 1920.*

It has been urged in opposition to the application of this principle to the pending case that such incidental jurisdiction as we may possess over intrastate rates is contingent upon proof that discrimination exists affecting particular persons or localities. But inasmuch as the basis of our jurisdiction is our power to regulate interstate commerce, it follows that the decisive factor is whether the rates under consideration injuriously affect interstate commerce. It is no answer to this to say that if this conclusion be admitted it may have the effect of completely displacing state jurisdiction over state commerce. There may be cases in which intrastate rates affect interstate commerce injuriously in ways so manifest as to make them subject to our control. There may be cases in which the connection of intrastate rates with the movement of interstate commerce is so remote and unimportant that we may properly disregard it. But in every case which puts in question intrastate rates, the decisive factor is whether or not they affect interstate commerce injuriously to a considerable extent. If they do they are brought under our jurisdiction and made subject to our control, even although the whole rate structure of a state should be involved.

It has not happened heretofore that we have had occasion to make such an extensive exercise of our authority as is now contemplated, and we could not be moved to do so save by the most cogent reasons. Such reasons have been supplied by the situation in which the transportation interests of the country were placed and the action taken by Congress to relieve that situation.

Our findings in Increased Rates, 1920, supra, were responsive, as the report shows, to legislation enacted by the Congress as part of the transportation act, 1920, approved February 29, 1920, now incorporated in the interstate commerce act as part of section 15a thereof, paragraphs 2 and 3 reading as follows:

> (2) In the exercise of its power to prescribe just and reasonable rates the Commission shall initiate, modify, establish or adjust such rates so that carriers as a whole (or as a whole in each of such rate groups or territories as the Commission may from time to time designate) will, under honest, efficient and economical management and reasonable expenditures for maintenance of way, structures and equipment, earn an aggregate annual net railway operating income equal, as nearly as may be, to a fair return upon the aggregate value of the railway property of such carriers held for and used in the service of transportation: Provided, That the Commission shall have reasonable latitude to modify or adjust any particular rate which it may find to be unjust or unreasonable, and to prescribe different rates for different sections of the country.
>
> (3) The Commission shall from time to time determine and make public what percentage of such aggregate property value constitutes a fair return thereon, and such percentage shall be uniform for all rate groups or territories which may be designated by the Commission. In making such determination it shall give due consideration, among other things, to the transportation needs of the country and the necessity (under honest, efficient and economical management of existing transportation facilities) of enlarging such facilities in order to provide the people of the United States with adequate transportation: Provided, That during the two years beginning March 1, 1920, the Commission shall take as such fair return a sum equal to 5½ per centum of such aggregate value, but may, in its discretion, add thereto a sum not exceeding one-half of one per centum of such aggregate value to make provision in whole or in part for improvements, betterments or equipment, which, according to the accounting system prescribed by the Commission, are chargeable to capital account.

In accordance with these statutory provisions we designated four rate groups, one of which embraces the territory bounded on the west by the Mississippi River and on the south by the Ohio River and the main line of the Norfolk & Western Railway; and we authorized increased rates, fares and charges that were designed to enable the carriers as a whole in that rate group, "under honest, efficient and economical management and reasonable expenditures for maintenance of way, structures and equipment," to earn an aggregate annual net railway operating income equal, as nearly as may be, to 5½ per cent upon the asggregate value of the railway property of such carriers in that group, plus one-half of 1 per cent of that aggregate value for improvements, betterments or equipment, chargeable to capital account.

Congress has taken, as the basis for determining a fair return for the railroads, the aggregate value of the railway properties in each group held for and used in the service of transportation. In making a tentative finding of the value of the railway properties in each group, for the purposes of our report, we included all the railway property of each carrier held for and used in the service of transportation. This should not be construed as holding that jurisdiction over intrastate rates and fares has been taken away from the states and reposed in us.

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*Sec. 13 (3). Whenever in any investigation under the provisions of this Act, or in any investigation instituted upon petition of the carrier concerned, which petition is hereby authorized to be filed, there shall be brought in issue any rate, fare, charge, classification, regulation, or practice, made or imposed by authority of any State, or initiated by the President during the period of Federal control, the Commission, before proceeding to hear and dispose of such issue, shall cause the State or States interested to be notified of the proceeding. The Commission may confer with the authorities of any State having regulatory jurisdiction over the class of persons and corporations subject to this Act with respect to the relationship between rate structures and practices of carriers subject to the jurisdiction of such State bodies and of the Commission; and to that end is authorized and empowered, under rules to be prescribed by it, and which may be modified from time to time, to hold joint hearings with any such State regulating bodies on any matters wherein the Commission is empowered to act and where the rate-making authority of a State is or may be affected by the action taken by the Commission. The Commission is also authorized to avail itself of the co-operation, services, records and facilities of such State authorities in the enforcement of any provision of this Act.

(4) Whenever in any such investigation the Commission, after full hearing, finds that any such rate, fare, charge, classification, regulation, or practice causes any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce, which is hereby forbidden and declared to be unlawful, it shall prescribe the rate, fare, or charge, or the maximum or minimum, or maximum and minimum, thereafter to be charged, and the classication, regulation, or practice thereafter to be observed, in such manner as, in its judgment, will remove such advantage, preference, prejudice, or discrimination. Such rates, fares, charges, classifications, regulations, and practices shall be observed while in effect by the carriers parties to such proceeding affected thereby, the law of any State or the decision or order of any State authority to the contrary notwithstanding.

We find nothing in the law to indicate that such was the intent of Congress. But Congress has directed that we allow rates that will yield in the aggregate a return of 5½ or 6 per cent upon the value of the railway property in each of the groups. There can be no doubt of the power of Congress to devise and provide for carrying into effect a plan for assuring to the nation's interstate railroads a fair return upon the value of their property; and the full control by Congress of this matter is not to be denied on the ground that the carriers' aggregate earnings are a commingling of intrastate revenue and interstate revenue. In the Minnesota Rate Cases, 230 U. S., 399, the Supreme Court said:

This reservation to the States manifestly is only of that authority which is consistent with and not opposed to the grant to Congress. There is no room in our scheme of government for the assertion of state power in hostility to the authorized exercise of Federal power. The authority of Congress extends to every part of interstate commerce, and to every instrumentality or agency by which it is carried on; and the full control by Congress of the subjects committed to its regulation is not to be denied or thwarted by the commingling of interstate and intrastate operations. This is not to say that the Nation may deal with the internal concerns of the State, as such, but that the execution by Congress of its constitutional power to regulate interstate commerce is not limited by the fact that intrastate transactions may have become so interwoven therewith that the effective government of the former incidentally controls the latter. This conclusion necessarily results from the supremacy of the national power within its appointed sphere.

The record shows that the refusal of the state of New York to permit the carriers to increase the rates and fares here in controversy to the extent approved by us is costing the railroads between $11,000,000 and $12,000,000 annually. In other words, the annual earnings of the interstate carriers operating in New York are now between $11,000,000 and $12,000,000 less than they would be if the general level of rates and fares approved by us had become effective on intrastate traffic; and to that extent the declared purpose of Congress is defeated by a preferential basis of rates and fares maintained by authority of the state of New York.

This proceeding presents a practical question which we have endeavored to deal with in a practical way. The needs of these interstate carriers for revenue to enable them to provide adequate transportation service and facilities are immediate and, in the interest of the public, can not be permitted to await the consideration in detail of individual fares, charges and rates. The record shows that the respondent carriers perform the services here in question under substantially similar circumstances and conditions, whether in respect of interstate or intrastate transportation; and that the lower basis of intrastate fares, charges and rates results in undue prejudice against interstate passengers and shippers and unjust discrimination against interstate commerce. The present record warrants the findings hereinafter made. Those findings are without prejudice to the right of the authorities of the state of New York or of any other interested party, to apply in the proper manner for a modification of our findings and order as to any fares, charges or rates on the ground that the latter are not related to the interstate fares, charges or rates in such a way as to contravene the provisions of the interstate commerce act.

### Passenger Fares

The record leaves no doubt as to the unduly preferential character of the intrastate fares and charges now in effect in the state of New York. Interstate passenger fares are in general on a basis of 3.6 cents per mile as maximum. Passengers traveling between points in the state of New York and points in other states may be required to pay 3.6 cents per mile, whereas passengers traveling within the state of New York pay only 3 cents per mile. The basis of 3.6 cents applies on intrastate traffic in every state bordering on the state of New York. In other words, intrastate passengers in New York enjoy a basis of fares distinctly lower than those exacted of interstate travelers in the same territory, often riding in the same trains, and also lower than the fares paid by intrastate passengers in neighboring states. The record shows beyond question that there are no transportation conditions in the state of New York that justify lower rates or fares, on the whole, than those applicable in neighboring states, or lower than the interstate rates and fares between points in New York and points in other states.

The situation is well illustrated by the fares between New York City and Buffalo. Of the several available routes connecting these points that over the New York Central is intrastate, while the others are interstate. Exclusive of war taxes it appears that since August 26, 1920, the fare has been $14.27 over the interstate routes and $13.16 over the New York Central, a difference of $1.11 in favor of the passenger using the latter route. In the case of a passenger occupying a lower Pullman berth the difference is increased to $2.36. Moreover, a passenger traveling from New York City to a point west of Buffalo can, by buying a ticket to Buffalo over the New York Central and buying another ticket at Buffalo to his destination, defeat the through interstate fare. Representatives of the carriers stated that the inevitable result of this situation would be the reduction of the interstate fare from New York to Buffalo to the level of the intrastate fare, and that this would tend to disrupt the entire fabric of the interstate passenger fares in the territory involved.

Inasmuch as the excess baggage charges are arranged upon a scale bearing a fixed relationship to passenger fares and correspondingly graded in amount, such charges are governed by the passenger fares, and any discrimination in passenger fares would necessarily involve a discrimination in excess baggage charges. This statement concerning the manner in which the baggage charges are determined is based upon the schedule of rates and charges of the carriers now on file in the Commission's office.

### Rates on Milk and Cream

The expression "milk and cream" as used herein includes milk, cream, skim milk, buttermilk, condensed milk, evaporated milk, and pot cheese, and for the purpose of indicating the effect upon interstate commerce and upon the revenues of carriers, of the discrimination under consideration, we give illustrations as follows:

The New York Central Railroad Company operates nine milk trains daily into the New York City district, carrying 1,300,000 quarts of milk and cream, of which approximately 75 per cent is shipped over intrastate routes and approximately 25 per cent over interstate routes.

Nine or ten carloads of milk and cream per day originate on the Ulster & Delaware Railroad, which extends from Kingston, N. Y., northwesterly to Oneonta, 107 miles. The cars are delivered to the New York Central at Kingston and, together with six or seven cars originating on a branch of the latter carrier extending southwesterly from Kingston, are there formed into a milk train which moves to New York over the tracks of the West Shore line. This route runs through a part of the state of New Jersey, the West Shore terminals being at Weehawken, N. J., and is therefore an interstate route. Shipments of milk and cream also originate at points along the east side of the Hudson in territory not far distant from that served by the Ulster & Delaware and move to New York over the intrastate route of the New York Central along the east bank of the Hudson River. On shipments using the interstate route the rates charged are 20 per cent higher than those over the intrastate route, although there is no justification from a transportation viewpoint for a difference in the rates.

Again, a milk train is operated by the Delaware & Hudson Railroad from Eagle Bridge, N. Y., which is northeast of Troy, in a northerly direction, a distance of 52 miles, to Castleton, Vt., thence southwesterly to Troy, N. Y., where it is delivered to the New York Central. Between Eagle Bridge and Castleton this train crosses the state line three times and again shortly after leaving Castleton for Troy. All shipments received before the last crossing of the state line are interstate shipments, the other intrastate shipments. On milk and cream in this train which happens to cross a state line charges must be paid substantially in excess of those applying on intrastate shipments moving in the same train. There is no doubt that shipments of milk and cream originating in western Vermont and shipped to the New York City district over interstate routes are in direct competition with shipments of the same commodities originating in the eastern part of the state of New York and moving to the New York City district over intrastate routes.

Furthermore, there is a substantial portion of the state of New York, which embraces, generally speaking, the central portion of the state, from which milk and cream may move to the New York City district over either interstate routes or intrastate routes. For the purpose of illustration we may refer to the line of the New York Central extending from Albany to Syracuse with a branch line extending from Syracuse southeasterly to Earlville, and to the line of the Delaware & Hudson from Binghamton to Albany. From this whole territory shipments of milk and cream may move to the New York City district over intrastate routes. From the same general territory, however, shipments may move over the interstate routes of the New York, Ontario & Western, the Delaware, Lackawanna & Western, and the Lehigh Valley railroads. Each of these roads has one or more points of contact with the New York Central's main line between Utica and Syracuse and with its branches in that territory. Shipments moving over the interstate routes now pay charges 20 per cent higher than those charged for shipments from substantially the same territory moving over intrastate routes.

The rates on milk and cream to the New York City district have been considered by us at various times. In Milk and Cream Rates to New York City, 45 I. C. C., 412, we found that the interstate rates on this traffic were unreasonable and unduly prejudicial to shippers from nearby points and unduly preferential of shippers from distant points; and we prescribed a scale of mileage rates, in blocks of 10 miles each, for distances up to 630 miles. The prescribed basis was also adopted by the New York Central on intrastate traffic, resulting in a uniform scale of rates over interstate and intrastate routes. By the application of the 20 per cent increase to interstate rates without a corresponding increase in intrastate rates, this uniformity has been destroyed.

### Commutation Fares

The record contains comparatively little evidence on the subject of commutation fares, but so far as it goes it discloses facts in the presence of which we can not presume that the existing rate structure is just and reasonable in its established relationships and that it should be adopted as the basis upon which a general advance should be authorized, as in the foregoing particulars. We shall therefore reserve for future consideration this branch of the case, and as to it we do not now make any finding or enter any order, but we shall keep the case open for further investigation, limited to the subject of commutation fares and commutation baggage charges in the state of New York as to the question whether they cause any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand, and interstate or foreign commerce on the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce.

### Findings

Subject to the above reservation in the matter of commutation fares and commutation baggage charges, we are of the opinion and find that the increases made by the carriers under Ex Parte 74, relating to passenger fares and baggage charges, and now in effect, result in reasonable passenger fares and baggage charges for interstate transportation within the territory involved in this proceeding, and that the failure of the carriers within the state of New York to increase the standard intrastate fares and charges correspondingly has resulted in the past and will result in the future: In intrastate fares and charges lower than the corresponding interstate fares and charges; in undue prejudice to persons traveling in interstate commerce within the state of New York and between points in the state of New York and points in other states; in undue preference and advantage to persons traveling intrastate in New York, and in unjust discrimination against interstate commerce.

We further find that said undue prejudice and unjust discrimination should be removed by making increases in said intrastate passenger fares and baggage charges which shall correspond with the increases heretofore made as aforesaid in interstate passenger fares and baggage charges.

We further find that the increases made by the carriers under Ex Parte 74, relating to space occupied by passengers in sleeping and parlor cars, result in reasonable charges for the occupancy of such space by passengers traveling in interstate commerce in the territory involved in this proceeding, and that the failure of the carriers within the state of New York to increase correspondingly the charges for like space for passengers traveling in intrastate commerce has resulted in the past and will result in the future: In intrastate charges lower than the corresponding interstate charges; in undue prejudice to persons traveling in interstate commerce within the state of New York and between points in the state of New York and points in other states; in undue preference and advantage to persons traveling intrastate in New York, and in unjust discrimination against interstate commerce.

We further find that said undue prejudice and unjust discrimination should be removed by making increases in said intrastate charges which shall correspond with the increases heretofore made as aforesaid in interstate charges.

We further find that the increases made by the carriers under Ex Parte 74, relating to rates on milk and cream, and now in effect, result in reasonable rates on milk and cream for interstate transportation within the territory involved in this proceeding, and that the failure of the carriers within the state of New York to increase the intrastate rates on milk and cream correspondingly has resulted in the past and will result in the future: In intrastate rates lower than the corresponding interstate rates; in undue prejudice to shippers of milk and cream in interstate commerce within the state of New York and between points in the state of New York and points in other states; in undue preference and advantage to shippers of milk and cream in intrastate commerce in New York, and in unjust discrimination against interstate commerce.

We further find that said undue prejudice and unjust discrimination should be removed by making increases in said intrastate rates on milk and cream which shall correspond with the increases heretofore made as aforesaid in the rates on milk and cream shipped in interstate commerce.

We further find that, whether the aforesaid passenger fares, baggage charges, surcharges, or rates on milk and cream pertain to transportation in interstate commerce or to transportation in intrastate commerce, the transportation services, in each instance, are performed by the carriers under substantially similar circumstances and conditions.

An appropriate order will be entered.

EASTMAN, Commissioner, dissenting:

I am unable to join in the decision of the majority, because I believe it goes beyond our lawful power. The objection is more than technical, for it concerns the basic relations between the state and federal governments, a matter of great moment.

In essence, the carriers' position is that when we authorize an increase in interstate rates under section 15 (a) of the interstate commerce act a corresponding increase must be made in intrastate rates; otherwise unjust discrimination against interstate commerce results which it is our duty under section 13 to correct. State commissions may be asked to authorize the intrastate increases, but they need be offered no evidence except the fact of our decision and have no real discretion. The carriers accept the logical consequence of this view, if I understand them correctly, by holding that applications to the state commissions are in substance a matter of courtesy and that we could, under section 13, either upon complaint or upon our own motion, prescribe the intrastate rates desired even if no such applications had been made. If this be so, it follows that we could practically at will deprive any or all of the states of authority over intrastate rates, for when such rates are once prescribed by our order under section 13 they cannot thereafter be changed without our consent.

The record in the instant case is based upon and conforms to this general theory of our power, and it is the only theory, it seems to me, upon which the decision of the majority can in full measure be supported. I am unable to believe that it is sound.

The Supreme Court of the United States has said:

> In construing federal statutes enacted under the power conferred by the commerce clause of the Constitution the rule is that it should never be held that Congress intends to supersede or suspend the exercise of the reserved powers of a State, even where that may be done, unless, and except so far as, its purpose to do so is clearly manifested. Illinois Central R. R. vs. Public Utilities Commission, 245 U. S., 493, 510.

It is in the light of this wise and salutary rule that we should approach the issue before us, construing the provisions of the act with scrupulous respect for state authority. It is, I think, our duty to conclude that when the Congress expects us to exercise new powers at the expense of the states, we shall be told to do so in plain and unmistakable terms.

In defining our jurisdiction, at the very beginning of the interstate commerce act, paragraph 2 of section 1, states that the provisions of the act shall not apply—

> To the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property, wholly within one State and not shipped to or from a foreign country from or to any place in the United States as aforesaid.

The language is unequivocal, and there is no subsequent provision which runs counter to the limitation. It is interstate and not intrastate transportation with which the act has to do. Under paragraph 4 of section 13 it is true that we may prescribe intrastate rates, but only for the purpose of removing unjust discrimination against interstate commerce. Plainly this power springs from and is merely an incident of the duty to regulate and protect interstate traffic.

Turning to section 15 (a), our duty to establish rates which will enable carriers to earn a fair return upon the aggregate value of their railway property relates and is confined to interstate rates. Without regard to the limitation of section 1, there is no "clearly manifested purpose" to extend our authority over intrastate rates, and certainly there is none in view of this limitation. Nor is such a conclusion inconsistent with a reasonable interpretation and practical application of this section. A rule is laid down for our guidance, but our duty is confined to interstate rates and it is a duty merely to maintain such rates at the level which will yield the return desired, assuming that the states will exercise their own power justly and taking into consideration our right to correct intrastate rates which unjustly discriminate against interstate commerce.

At this point we may consider for a moment whether or not there is reason to believe that the Public Service Commission of New York is disposed to deal justly with the carriers. Following our decision in Increased Rates, 1920, supra, applications were filed with that commission for authority to make like increases in intrastate rates, fares and charges. With a few minor exceptions the freight increases sought were permitted at once to become effective, as was possible under the state statutes, without indication of approval or disapproval and subject to complaint or investigation in the future. The situation was different as to passenger fares. By a provision of the New York law these are limited to a maximum of 3 cents per mile, but the state commission pointed out that it could permit fares in excess of this limit upon a showing that existing fares were insufficient to afford reasonable compensation for the service rendered. Notwithstanding this intimation the carriers offered no evidence and did not assert that the fares were insufficient, but relied upon the fact that we had permitted an increase of 20 per cent in the interstate fares. Under the circumstances no course seemed open to the New York commission except to deny the application, and this it did upon the sole ground of lack of evidence.

There is no basis for a belief that the New York commission is disposed to deal other than justly with the carriers, or that it

would have been unduly exacting if they had undertaken to show insufficiency of compensation. Upon the facts before us and in a spirit of comity the carriers might well be remitted to the state tribunal to exhaust their remedies before coming to us for action which will deprive the state of all authority over intrastate fares so long as our order remains in effect. In this view of the matter whatever losses in revenue the carriers may have suffered are chargeable to their own default.

But approaching the matter solely from the viewpoint of our own jurisdiction, it is clear, I think, that for such authority as we possess over intrastate rates we must now look to the provisions of section 13. The question at once arises whether by reason of this section we have an essentially different issue before us than has frequently been considered under section 3 of the act to regulate commerce in so-called "Shreveport cases." The carriers assert that the issue is different because section 13 not only prohibits "any undue or unreasonable advantage, preference or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand," but also prohibits "any undue, unreasonable or unjust discrimination against interstate or foreign commerce." Their view, as I understand it, is that the word "discrimination" in this latter phrase is equivalent to the word "burden," and that the effect is to prohibit what was not prohibited by section 3, namely, an unduly low level of rates within the state which is yet not alleged or shown to be unduly preferential of or unduly prejudicial against any particular person or community.

This conclusion I find it difficult to accept. Upon protest the conference committee of the Senate and House of Representatives struck from section 13 the words "undue burden" and wrote in their place the words "undue, unreasonable or unjust discrimination," which now are there. I hesitate to believe, as the carriers urged that no change in meaning was intended or accomplished by this change in words. Moreover, in speaking of section 3 of the act to regulate commerce in the consideration of the original Shreveport Case, the Supreme Court of the United States said:

It is apparent from the legislative history of the act that the evil of discrimination was the principal thing aimed at, and there is no basis for the contention that Congress intended to exempt any discriminatory action or practice of interstate carriers affecting interstate commerce which it had authority to reach. (Houston East & West Texas Ry. Co. vs. United States, 234 U. S., 342, 356.)

Surely this language is quite as broad as the words in section 13 to which our attention is now directed.

If the issue before us is not essentially different from the issue which has been considered in prior "Shreveport cases," it will, I think, be conceded that while the evidence may be sufficient to justify action against certain intrastate fares and charges, it is not sufficient to justify the all-embracing action which the majority approve. This is indicated by the fact that the carriers have not seen fit to rely upon preference to persons or communities, none of which are complaining, but have rested their case chiefly upon the allegation that the intrastate rates are upon a lower level than the interstate and fail to contribute their fair share of the railway operating income to which we have found that the carriers in the eastern group are entitled. For the reasons above stated I doubt our power to change state rates upon this ground. It falls nothing short of an appellate power to substitute our judgment as to the reasonableness of such rates for the judgment of the states. But assuming that we possess this power, is the evidence sufficient to justify us in exercising it?

Stating the question differently, is there evidence that the intrastate fares and charges in question are not producing their fair share of railway operating income and, if they are not, that the percentage increase desired is necessary to bring them to the proper level? That is not, it seems to me, an inevitable conclusion from our decision in Increased Rates, 1920, supra, and in this connection it is desirable to understand clearly the purport and effect of that decision. We were there faced with the necessity of providing without delay the additional revenue needed to bring the aggregate income of the carriers to the level prescribed by the act, and we adopted the expedient of authorizing horizontal percentage increases in rates, fares and charges within and between certain territorial groups. This expedient was necessary, for any detailed consideration of individual rates was impracticable in the time available. Nevertheless, it should be noted that the act does not prescribe this method of increasing rates, that our duty under section 15 (a) is a continuing duty, and that our finding was only that the method employed would "result in rates not unreasonable in the aggregate." It rested upon the assumption that extensive readjustment would probably be necessary. It is not equivalent to a finding that individual rates, fares and charges, or classes of rates, fares and charges, so increased and now in effect, are just and reasonable. Still less does it follow as a necessary conclusion, where state authority is involved, that the passenger fares within any particular state must be increased 20 per cent in order to produce their fair share of railway operating income. But if our decision in Increased Rates, 1920, is not evidence of that fact, certainly there is no other evidence of record upon which such a conclusion can be based.

No doubt it may be unnecessary that the individual fares and charges within the state should all be considered separately or that the value of the property used in the intrastate transportation should be established and the retutrn now earned upon that value estimated by elaborate computations. But I am unable to escape the conclusion that even if the theory of the carriers as to our power under section 13 be accepted, at least it should be shown, by evidence sufficient to justify a valid opinion, that the intrastate fares and charges in question are not now furnishing adequate compensation for the service rendered judged by the standard which the Congress has set forth, and that an increase of 20 per cent is necessary to this end.

Summing the matter up, without going into further detail, I am of the opinion that upon the record before us the decision of the majority involves the exercise of a power which goes beyond any "clearly manifested purpose" of the Congress, and which we ought not to attempt to exercise until it is conferred upon us in plain and unmistakable terms. Nor would such a conclusion leave the carriers without a remedy, if they are prepared to bring the necessary evidence to the attention of the New York commission.

## PAYMENT OF CHARGES IN UNITED STATES CURRENCY

**I. and S. No. 1191.*** (59 I. C. C., 263-264.)

Submitted September 10, 1920. Opinion No. 6448.

Proposed tariff rules requiring payment of charges in United States currency and prepayment of charges on shipments into Canada found justified in so far as they affect charges for interstate transportation wholly within the United States, and the charges or divisions accruing for that part of the transportation between the United States and a foreign country which takes place within the United States. Suspension orders vacated.

**Division 3, Commissioners Hall, Eastman, and Ford.**

HALL, Commissioner:

These procedings have been consolidated because they involve the same general subject matter, and will be disposed of in one report. By the schedules under suspension in No. 1191 and No. 1191-No. 2, issued by Agent Gomph, a rule is proposed requiring payment in United States currency of the rates published therein, including joint rates to points in Canada. Since the hearings the suspended portions of the schedules enumerated in our first and second supplemental orders in No. 1191, and in our order No. 1191-No. 2, have been canceled under permission from us. By the schedules under suspension in No. 1196, issued by Agent Leland and Agent Kelly, a rule is proposed requiring prepayment of charges on shipments into Canada. Prepayment in this country would normally and lawfully be in United States currency. Both proposed rules would, therefore, have the effect of requiring payment of the through charges in United States currency.

The proposed rules are intended to protect the carriers operating in the United States from the present depreciation in value of Canadian currency as compared with United States currency of the same denomination, and to insure their receiving in lawful money of the United States the full amount of their charges or divisions accruing for that part of the transportation which takes place within the United States.

In Gamble-Robinson Com'n. Co. vs. Chicago & N. W. Ry. Co., 168 Fed., 161, the Circuit Court of Appeals for the Eighth Circuit said at page 164:

Prior to the enactment of the act of February 24, 1887, to regulate commerce among the states, interstate railway traffic was regulated by the principles of the common law, and under those principles common carriers had the right to require the prepayment of charges for freight of one of more persons or corporations, and to give credit for such charges to other persons or corporations similarly situated. Interstate Commerce Commission vs. Baltimore & Ohio R. R. Co., 145 U. S., 263, 275, 12 Sup. Ct. 844, 36 L. Ed. 699; Southern Indiana Express Co. vs. United States Express Co., (C. C.) 88 Fed. 659, 662; Randall vs. Railway Company, 108 N. C. 612, 13 S. E. 137.

That act left common carriers free to exercise to their full extent all the rights and privileges they had under the common law, so far as these rights and privileges and their exercise were not rendered unlawful by the provisions of that act.

Protestants object to the proposed rules, not on the ground that the carriers are not entitled to demand prepayment of their charges for such portion of the transportation as takes place in the United States, or that the rules are unduly prejudicial to them and unduly preferential of others, but on the ground that they would result in the carriers receiving an overpayment for that part of the transportation which takes place in Canada to the extent of the difference in the exchange values of United States and Canadian money. Our jurisdiction over transportation to or from a foreign country is limited to that part of the transportation which takes place within the United States. Interstate Commerce Act, section 1, paragraph (2); International Paper Co. vs. D. & H. Co., 33 I. C. C., 270.

*This report also embraces Investigation and Suspension Docket No. 1191-No. 2, Payment of Charges in United States Currency, and Investigation and suspension Docket No. 1196, Prepayment of Freight Charges to Points in Canada.

We can not, therefore, undertake to pass upon the proposed rules in so far as they affect charges for transportation beyond the borders of the United States, but will leave their validity and propriety to be determined under the laws in force where the transportation takes place.

We find that the proposed rules have been justified in so far as they affect the charges for interstate transportation wholly within the United States, and the charges or divisions accruing for that part of the transportation between the United States and a foreign country which takes place within the United States.

The orders of suspension will be vacated and these proceeding discontinued.

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# EXPRESS CLASSIFICATION, 1920

**CASE No. 11416.** (59 I. C. C., 265-282.)

Submitted Sept. 22, 1920. Opinion No. 6449.

Upon petition by the American Railway Express Co. for approval of certain proposed additions to, cancellations of, and changes in designated items of the official express classification: Certain of the additions, cancellations and changes, as proposed or with indicated modifications, found justified; others found not justified.

CLARK, Chairman:

A proposed report of the examiner was served upon the parties, to which exceptions were filed.

This investigation was instituted to determine the propriety and lawfulness of proposed changes in the official express classification as to which the respondent American Railway Express Company seeks approval. As in Express Rates, 1920, 58 I. C. C., 281, copies of the petition and accompanying schedule of proposed changes were transmitted to the several state railroad and public utilities commissions and to the principal commercial bodies of the country, and hearings have been had at representative points.

Included in the schedule are proposed additions to, cancellations of, and changes in certain items of the classification, other than those hereinafter mentioned, to which no objection has been offered from any source, and as to which respondent's reasons in justification have been submitted. We find that respondent has justified these items.

### Display Fixtures, Store or Sidewalk

This is a new item. As proposed, it would rate as first class fixtures not exceeding 50 inches in height, length or width and as double first class those exceeding 50 inches in any dimension; none to be accepted for shipment unless boxed or crated. By agreement with the only protestant respondent proposes also to rate as first class all such fixtures when knocked down or folded flat. As thus modified, the proposed item has been justified.

### Seat Cabs, Motor Truck

This item is also new. Respondent first proposed a rating of double first class on such seat cabs, boxed or crated. To meet objections made respondent now proposes to substitute ratings of first class for the cabs when completely knocked down, and double first class when not so knocked down; none to be accepted unless boxed or crated. When set up the article is very bulky. As so modified, the proposed item has been justified.

### Uniform Express Receipt

Respondent proposes to amend condition No. 7 of the uniform express receipt, relating to claims for loss and damage, so as to bring the provision limiting the period for the institution of suit into harmony with the interstate commerce act. Certain protestants having criticized, as a source of controversy, the further provision of the same condition limiting the filing of claims with the carrier to a period of four months "after a reasonable time for delivery has elapsed" in the case of undelivered shipments, respondent further proposes to limit the period definitely to "four months and fifteen days after shipment." This would meet the criticisms, and the additional 15 days should reasonably embrace respondent's maximum haul. A similar amendment should also be incorporated in condition No. 11 pertaining to export shipments, and in the live stock and other contracts. Of the further protest against the four-months limitation itself, in any case, and the request that the period be extended to six months, it is enough to say that that question is not within the issues, the four-months period involving no change from the present provision.

Condition No. 11 of the uniform receipt, under the caption "Special Additional Provisions as to Shipments Forwarded from the United States to Places in Foreign Countries," now reads:

> The company shall not be liable for any loss, damage or delay to such shipments over ocean routes and their foreign connections, the destination of which is in a foreign country, occurring outside the boundaries of the United States which may be occasioned by any such acts, rulings, laws, regulations or customs.

This provision supplements the next preceding condition of the receipt, whereunder shipments to foreign countries are accepted for transportation and delivery subject to the acts, etc., of oversea and foreign carriers, custodians and governments, their employes and agents. Respondent proposes to amend condition No. 11 to read as follows:

> The company shall not be liable for loss, damage, or delay not occurring on its own line or its portion of the through route, nor after said property is ready for delivery to the next carrier or to consignee. Claims for loss, damage, or delay must be made in writing to the carrier at the port of export or to the carrier issuing this receipt within nine months after delivery of the property at said port or, in case of failure to make such delivery, then within nine months after a reasonable time for such delivery has elapsed; and claims so made against said delivering or issuing carrier shall be deemed to have been made against any carrier which may be liable hereunder. Unless claims are so made the carrier shall not be liable.

The first sentence of this proposed substitute is clearly in conflict with paragraph 11 of section 20 of the interstate commerce act, commonly termed the Cummins amendment, which provides that any common carrier or transportation company subject to the act receiving property for transportation from one state or territory to another "or from any point in the United States to a point in an adjacent foreign country" shall issue a receipt or bill of lading therefor and be liable to the lawful holder thereof for any loss, damage or injury to such property "caused by it or by any common carrier, railroad or transportation company to which such property may be delivered or over whose line or lines such property may pass within the United States or within an adjacent foreign country when transported on a through bill of lading." This liability is placed upon the initial carrier "notwithstanding any limitation of liability or limitation of the amount of recovery or representation or agreement as to value in any such receipt or bill of lading, or in any contract, rule, regulation, or in any tariff filed with the Interstate Commerce Commission." Any such limitation in whatever form is declared to be unlawful and void.

Apparently respondent has a right to contract for limitation of its liability beyond its own line and after it has delivered the property to another carrier in respect of shipments to non-adjacent foreign countries, but a receipt or bill of lading which provides for that limitation of liability should clearly and appropriately disclose the class of traffic in connection with which it is to apply, and should recite that it is not to be used on shipments from a point in the United States destined to a point in an adjacent foreign country. Bills of Lading, 52 I. C. C., 671, 731, 732.

The proposed condition that respondent shall not be liable for loss, damage, or delay "after such property is ready for delivery to the next carrier or to consignee" would, if legal and enforceable, relieve respondent from liability when it had not even made a tender of delivery.

The first sentence of the proposed substitute condition has not been justified. This finding is without prejudice to respondent's right to modify the proposed condition in harmony with what we have said relative thereto.

### Pick-up and Delivery Service

Rule 6 of the classification provides, among other things, that respondent shall not be required to pick up or deliver shipments above the first floor of any building or residence when the shipments are of such size or weight as not to permit handling by one man and where elevator facilities are not available for the purpose; and the schedule proposes to include in the rule floors below the first floor. Protestants object that, strictly interpreted, this would exclude pick-up from or delivery to a basement floor, although a driveway might lead directly thereto; that leaving a shipment on the first floor is not delivery to a consignee who does not live or have his place of business on that floor; and that the provision is potentially discriminatory, in that one driver might readily handle a shipment that in size or weight would be beyond the capacity of another. Several corrective suggestions are offered, including a fixed limit of weight, and recognizing the fact that in some buildings express drivers are not permitted to go above the first or ground floor. Amendments to meet the various suggestions could be embodied in provisions to the following effect:

> Provided, however, That the express company shall not be required to pick up or deliver packages weighing in excess of 125 pounds, above or below the first floor in any building where elevator facilities or wagon approaches to the consignor's or consignee's floor are not available for such handling.
>
> Note.—At buildings where the express driver is not permitted to go above the first or ground floor, all outgoing packages must be tendered to the driver at the accessible floor, and delivery to the employe whose duty it is to receive goods for occupants of such buildings shall be considered delivered to the consignee.

While the record does not affirmatively establish 125 pounds as the appropriate limit of weight, it is proposed of record and not objected to by respondent, and with substantially the foregoing amendments the proposed change in the present rule has been justified.

### Refrigeration

Rule 18 of the classification, in so far as it pertains to refrigeration of carload shipments of perishable commodities, is rewritten to consolidate and unify the rules of general application to the subject, some of which are now carried in com-

modity tariffs, with some additions. The only provision called in question is the following:

> Excepting where, under tariff authority, shippers are permitted to furnish necessary ice, and do so at their own expense, whenever a stated refrigeration charge is shown in a tariff it must be collected in addition to the charge for transportation on each refrigerator car furnished on request of shipper, even though the latter may not desire any ice placed in the tanks or bunkers.

It appears that shippers of spinach from Texas order refrigerator cars, load them with iced packages, bill the shipment for transportation without ice in the bunkers and demand abatement of the stated refrigeration charges. The proposed rule is intended to cover such shipments, respondent's contention being that shippers who are unwilling to pay for refrigeration service should not be permitted to use standard refrigerator cars, constantly needed for that service, but should ship in baggage cars. On the other hand, it seems that, even with ice in the packages, the use of insulated cars is necessary to afford adequate protection on long hauls. It is true that in such cases the service is not that known as "protective," that is, merely excluding outdoor heat or cold, and is a form of refrigeration; but the provision would deny shippers the optional right of icing at their own expense. In fact, it is explained that charges are now collected in accordance with the proposed provision, which respondent desires to publish to conform to the practice. In Perishable Freight Investigation, 56 I. C. C., 449, the various phases of this question were considered. On pages 574-575 of the report we criticized a proposed assessment of stated charges in all cases of iced packages tendered for shipment in refrigerator cars and recommended a substitute provision. The whole matter should be made the subject of careful study, to include such questions as the seasonable or all-year movement of the commodities concerned, the occasional or constant necessity for the use of refrigerator cars, appropriate allowances or lower charges for substitute icing by shippers, proper provision against unnecessary use of refrigerator cars, appropriate safeguards concerning respondent's responsibility when not rendering the full refrigeration service, and other pertinent matters. While the proposed provision would apply only when refrigerator cars are furnished on request of shippers, we cannot find upon this record that it has been justified.

### Reconsignments

To the provision of rule 26 of the classification relating to reconsignments of less-than-carload shipments, it is proposed to add the following:

> Shipments, which, after being tendered for delivery at the address marked on the shipment, are, at the request of the owner, delivered at another address in the same city, must be assessed the charge under Scale 5, Local and Joint Schedule of First and Second Class Express Rates, I. C. C. No. ——, in addition to the charge applicable to the original address.

In response to a criticism it is proposed to modify the provision so that it will apply more definitely to tenders of delivery at marked street or other specific city addresses. Scale 2, now corresponding to what was scale 5 when the original proposal was drawn, will be substituted. It is explained for respondent that the provision is designed to compensate it in cases in which, tender of delivery having been made at a specified city address, in New York, for example, the driver is asked to deliver the package at some remote address, as in Brooklyn. In many instances the provision would be reasonable, but it would also require the assessment of the additional charge if the substitute place of delivery were but one door removed from the marked address. Some reasonable limitation as to distance or service should be included, and, in the absence of definite and satisfactory information upon that point, the proposed additional provision is found justified only if it is amended so as to apply exclusively to a substitute delivery at an address on a route other than that including the address marked on the shipment.

### Marking Requirements

It is proposed to add to the rules prescribing the manner in which various packages must be marked the requirement that shipments "when packed in wooden boxes, barrels, or crates must be marked, when space permits, with pen, brush, stencil, or waterproof crayon." This provision is prompted by the accumulating numbers of such packages reaching respondent's "no mark" department, the adhesive marking labels originally attached thereto becoming detached or defaced in transit through contact with fluids or absorption of atmospheric moisture or by abrasion or the like. It has been met by emphatic protests from large concerns, some of whom ship daily hundreds or thousands of packages which under the rule would have to be marked by hand or stencil. Such shipments are now commonly marked by adhesive labels, one or two, usually waterproofed with a coating of silicate of soda and by some shippers attached to recessed surfaces between outside structural cleats or battens of boxes so made. To meet the necessities of such shippers respondent proposes to qualify the foregoing requirement by adding the clause, "or by printed or typewritten label, which must be firmly affixed between outside battens or cleats and completely covered with silicate of soda." This in turn is protested in so far as it would make necessary the attachment of outside battens or cleats not entering into the structure of wooden packages, likely to be knocked off in transit and otherwise objectionable. The end sought by the additional requirements is desirable, but they should be so modified as to provide, substantially, that shipments—

> packed in wooden boxes, barrels or crates must be marked, when space permits, with pen, bush, stencil or waterproof crayon, or by a printed, typewritten or otherwise legibly written label affixed between outside structural cleats or battens or to an otherwise recessed surface, or by two such labels attached to two outer sides of such packages not provided with recessed surfaces, every such label to be securely attached with glue or equally good adhesive and fully coated with silicate of soda or other transparent waterproof material.

With substantially such modifications, the proposed additional requirements are found justified.

### Cloth, Except Silk

A proposed amendment of the present rule governing the wrapping of cloth, except silk, in bolts or solid rolls for shipment is, to meet the views of the only protesting shipper, modified to read as follows:

> In bolts or solid rolls, may be accepted if completely and securely wrapped with cloth or not less than two thicknesses of strong sulphite, rope or rag paper, each thickness having a resistance of not less than 70 pounds to the square inch, Mullen test, or not less than one thickness of strong sulphite, rope or rag paper, having a resistance of not less than 100 pounds to the square inch, Mullen test; the weight of any paper-wrapped bundles must not exceed 85 pounds and it must be securely tied with strong cord in one piece or with cloth or metal tape securely knotted, riveted or otherwise secured with metal fasteners.

As so modified, the proposed amended rule has been justified.

### Empty Carriers, Returned

It is proposed to increase the present transportation charges on specified empty shipping containers or carriers, returned, and to cancel the following so-called aggregating rule:

> When empty carriers named below are rated at a specific charge per carrier, the charge must be applied upon each carrier in the shipment, except that when the charge upon the gross weight at one-half of the rate per 100 pounds applicable to the commodity shipped in the carriers when full, pound rates, minimum charge 33 cents, is less than the charge at the rate per carrier, such lower charge must be assessed.

It is explained that this alternative aggregating rule is difficult of correct application, results in confusion and error, and produces abnormally low charges in some cases. Of the proposed increased charges on returned empty containers the following only are seriously contested, the figures opposite the articles being the present and proposed charges in cents per container:

| | Present. | Proposed. |
|---|---|---|
| Banana carriers, of 1-bunch capacity | 11 | 15 |
| Bread and cake empties | 5 | 15 |
| Ice cream empties— | | |
| Not exceeding 5-gallon capacity | 16 | 20 |
| Exceeding 5-gallon capacity | 27 | 35 |

In the present item the 5-cent charge on bread and cake empties does not include wagon service, an additional charge of 5 cents per empty being made for delivery, which service respondent "must" perform if the empties are not called for within 24 hours after arrival; a like additional charge of 5 cents applying for pick-up service and including delivery. This double basis of charges would be eliminated by the proposed item.

Respondent frankly admits a desire to discourage return shipments of empty containers because of its limited car and platform space, and urges that the present charges are not adequate. It makes particular point of the fact that the containers occupy as much room when empty as when filled, and refers to the increased use of paper cartons for bread shipments in lieu of returnable containers. On the other hand, it is asserted for the shippers that they are seldom accorded pick-up or delivery service in connection with returned containers, and they earnestly protest the proposed increased charges, superimposed upon increased rates on the commodities shipped in the containers. The only expressed opposition to the proposed cancellation of the aggregating rule is based upon the fact that it would withdraw a lower basis of charges. The proposed cancellation of that rule has been justified. A charge of 10 cents each on returned empty bread and cake carriers in all cases, to include pick-up and delivery service, has also been justified. Otherwise, the proposed increased charges on the empty carriers, returned, above listed have not been justified.

### Fish

Proposed increased shipping weights on fish in flour and sugar barrels from specified points and on fresh frozen, smoked, dried, salted, pickled, or otherwise preserved or cured fish generally were withdrawn at the hearing.

### Fish, Live, Aquarium or Breeding

The present item rates fish, live, aquarium or breeding, first class, charges based on gross weight of fish, cans, water, and

ice, less 25 per cent. The proposed item classifies live fish as "aquarium" and "breeding," those designated as "aquarium" fish to be rated double first class, charges to be based on gross weight. A further provision that shipments of such fish which could not reach destination within 24 hours after receipt from shippers would not be accepted was abandoned at the hearing. No change with respect to "breeding" fish is proposed.

It developes that the provisions with respect to "aquarium" fish were intended to include gold fish only. Such fish are or have been imported from Japan for breeding purposes, and shipments are made both for breeding and aquarium display. The record discloses that the proposed separation is unsound. The service of changing the water during transit at intervals of 12 or 24 hours and other precautions for safe transportation constitute the principal justification for the proposed rating on "aquarium" fish. Witnesses for some of the shippers dispute the necessity of changing the water at frequent intervals, or perhaps at all in the absence of delays at transfer points, and testify that loss or damage claims are rarely made. At the same time, it is clear that the traffic is of a character requiring some degree of special care during transportation. For certain of the shippers a rating of first class on such fish is proposed, regardless of the purpose for which they are shipped, charges to be based on gross weight, while for others that weight basis is opposed. A rating of first class on fish, live, aquarium or breeding, at gross weight of package has been justified, but not the proposed increased rating on aquarium fish.

### Fruit, Green

It is proposed to add to the provisions concerning this item the following:

> In order to facilitate handling, fruit in packages weighing less than 10 pounds each, shipped in lots of ten or more packages from one shipper to one consignee, must be crated or securely fastened together in bundles, each bundle to consist of not less than four nor more than ten packages.

It is directed particularly to shipment of grapes, cherries, plums, and certain berries in 3-pound baskets, several hundred of such packages, more especially of grapes, frequently moving in single shipments from one consignor to one consignee. It is testified that trains are delayed by the loading and unloading of such large numbers of packages. The purpise is to reduce the number of units per shipment and thus facilitate handling, and some shippers have been induced to co-operate to that end. Answering an objection that to tie the handles of such baskets together would make a clumsy package for stowage in cars or on trucks, respondent cites a practice in the east of ranging six or eight baskets in a row or rows with a board underneath, to which the baskets are securely tied. The provision also includes the use of crates. Further objection is made on the ground of the labor and lumber required, and it is suggested that preferred treatment of baskets weighing 10 pounds or over might be involved, but upon practical considerations the requirement seems reasonable, and it is found justified.

### Ice Cream

It is proposed to increase the estimated weights, in pounds, at which ice cream in cans, packed in pails, tubs or barrels, with ice, must be waybilled, as folows:

| | Present | Proposed |
|---|---|---|
| 1 gallon can | 30 | 35 |
| [illegible] gallon can | 50 | 58 |
| [illegible] gallon can | 60 | 69 |
| [illegible] gallon can | 80 | 92 |
| [illegible] gallon can | 100 | 115 |

In quantities exceeding 5 gallons in the same tub or barrel, the present estimated weight of 18 pounds per gallon is to be increased to 21 pounds per gallon.

This item has been actively contested, the evidence relating principally to the 5-gallon package as that most commonly shipped. Respondent's justification is that the average gross shipping weights are much in excess of the present estimated billing weights and will exceed those proposed. Tests of considerable numbers of 5-gallon packages at various points disclose average weights ranging from 145 to 172 pounds. Other indicated tests similarly show varying excesses. Respondent also cites the perishable nature of the commodity and the consequent transportation risk. Claims paid from October, 1918, to September, 1919, aggregated $42,158.70, comprising 6,991 claims. The ratio to the revenue from the traffic is not shown. The indicated excesses in average shipping weights are not seriously controverted, but small profits, the cumulative effect of increased weights and rates, and the almost total absence of pick-up and delivery service are among the objections urged in opposition to the proposed item. Substitute lower bases are suggested, and claims are generally attributed to delays or carrier's errors in transit.

The proposed increased estimated weights appear to be well within the average weights transported, and they are found justified.

### Laundry

To this item it is proposed to add the requirement that "Baskets and hampers containing laundry or clothing must be locked or sealed." The purpose is to prevent thefts or other losses in transit and provide a means of determining respondent's responsibility where shortages are alleged. Protestants question the practicable maintenance and use of supplies of seals as between consignors and consignees, such as would accomplish the desired purpose, and urge that respondent should provide and apply the necessary locks or seals. No particular type of lock or seal is stipulated in the provision, and certainly it is not the duty of the carrier to assume part of the cost of packing such shipments for safe transportation. The proposed requirement appears to be reasonable, and it is found justified.

### Lobsters

A proposed increase in shipping weights of lobsters, when ice is necessary for preservation and is used for that purpose only, from the present basis of 125 per cent of net weight to 200 per cent thereof, unless actual gross weight is less at time of shipment, is now modified by agreement with the shippers to provide for 150 per cent of net weight, without further change. As so modified, the proposed increased basis has been justified.

### Newspapers Other Than Daily, Etc.

Under the present item newspapers other than daily, magazines, periodicals, and other publications which are registered in the post office as second-class matter, pound rates (minimum 10 cents for each company carrying, but not less than 1 cent per pound, unless the charge at first-class scale rate is less in which case the first-class charge will apply), are rated one-half of first class. This means that one-half of the first-class rate per 100 pounds in any case is reduced to a rate per pound and applied accordingly, subject to the minimum. It is proposed to substitute the following:

> Between points where the first-class rate does not exceed $2.50 per 100 pounds, pound rates, minimum charge 11 cents, first class.
>
> Between points where the first-class rate exceeds $2.50 but does not exceed $5.00 per 100 pounds, minimum charge 11 cents, 2.5 cents per pounds
>
> Between points where the first-class rate exceeds $5.00 per 100 pounds, pound rates, minimum charge 11 cents, one-half of first class.

Respondent urges that these publications are now accorded rates materially lower than other first-class express matter, the rates originally having been made in competition with the postal rates, and that the rates proposed will still be less in some cases than the present postal rates; also, that the service performed in connection with the publications is not different from that in connection with other merchandise traffic. The publishers strongly protest the proposed increases, largely because of present high publishing costs, the educational character of the traffic, and its desirability from a transportation standpoint; and they point out respondent's following explanation of record of its failure to seek the full first-class basis:

> The competition of mail and freight companies must be considered, and the business is undoubtedly more profitable than the ordinary run of express business, since it moves in large quantities at regular intervals, and since the average weight of newspapers and magazines is much greater per cubic foot than the average express shipment. Furthermore, the shipments are not easily damaged and can be handled expeditiously and with very few claims for losses or delays.

It is true that the publications in question are primarily first-class express matter, but in our judgment the record does not support such material increases over a long-established basis as those proposed, coupled with recent increases in the rates themselves. On the other hand, confirming the point now made in respondent's exceptions, a check discloses that where the first-class rates were less than $2 per 100 pounds, for example, for distances of from 450 to 500 miles in eastern territory, practically no increases have been made hitherto. Undoubtedly, the short-haul traffic should bear a fair share of the recent general increases. All the circumstances considered, we find that the proposed increased bases have not been justified, but that a minimum rate of 1.5 cents per pound, first-class rates to apply where lower, has been justified.

### Newspapers, Daily

By compromise with the protesting daily newspapers, a rate of 1 cent per pound is substituted for the present rate of one-half cent per pound on such papers, forwarded on the day of issue, between all points where the first-class rate does not exceed $4.50 per 100 pounds, without wagon service either in receipt or in delivery and when special mail or newspaper trains are not used; and the increased bases originally proposed are withdrawn. The substitute proposed increased rate has been justified.

### Oysters, Clams, or Scallops

It is proposed to increase the estimated billing weights on these commodities, in less than carloads, in shell, glass jars, canned, or in bulk. The proposal to increase such weights on shucked oysters in bulk from 12 pounds to 15 pounds per gallon is sharply protested. Respondent exhibits tests made at Baltimore, Crisfield, and Cambridge, Md., South Norwalk and New Haven, Conn., and St. Louis, Mo., in April, 1920, covering 194 packages, containing 1,129 gallons, the gross weights aggregat-

ing 19,415 pounds. St. Louis was included as a jobbing point. The aggregate billing weights, at 12 pounds per gallon, were 13,548 pounds, or 69.7 per cent of the gross weights; at 15 pounds per gallon the billing weights would have been 87.2 per cent of the gross. Respondent also stresses the perishable character of the commodity and consequent necessity for a certain amount of re-icing in transit and some figures showing re-icing costs are submitted.

Originally the estimated billing weight was 10 pounds per gallon. Besides pointing out that respondent's test weights were obtained in April, practically the last and one of the warmest of the season's shipping months, protestants reveal the fact that by a rule or regulation not on file with this Commission, adopted in July, 1919, respondent has required shippers to pack 8 pounds of ice per gallon of oysters from Chesapeake Bay, 8 pounds from New England to points west and 6 pounds to points east of Buffalo, N. Y., and 4 pounds within New England. The higher of the resulting gross weights apparently becomes the basis of the present application. It is testified that, except in September, when warm weather is sometimes encountered, 5 pounds of ice per gallon is ample. Relatively few shipments are made in April. The package most commonly shipped contains 5 gallons of oysters. A government inspection at Baltimore in 1919 disclosed the weight of a gallon of oysters, including the can, to be 8 pounds 10.5 ounces. A 5-gallon can, therefore, closely approximates 43 pounds; the packing box approximates 12 pounds; adding 5 pounds of ice per gallon, or 25 pounds, the total weight is 80 pounds, or 5 pounds in excess of the proposed estimated weight, taking no account of meltage. Respondent makes no attempt to prove a necessity for the amount of ice required by its unpublished rule.

It is not proposed to increase the present estimated billing weight of 12 pounds per gallon of shucked oysters, in carriers, in carloads, or to depart from the present application of actual weights to such oysters in naked cans, without carriers, in carloads. Protestants object that the increased weights in less than carloads would create a disparity that would unduly prefer carload shipments. Clams and scallops are not mentioned of record, and respondent has offered nothing specific in support of the proposed increased estimated weights of the articles in glass jars.

The proposed increased billing weights have not been justified.

### Poultry and Pigeons, Live

This item now provides, among other things, a rating of second class on poultry, in slatted coops, the declared value of which does not exceed 25 cents per pound, gross weight of poultry and coop. Respondent proposes, instead, a rating of first class on poultry, in slatted or wire coops, where the declared value does not exceed 50 cents. This is the only protested change in the item. Its object is to discourage long hauls or to insure respondent against the high rate of mortality to which long-haul shipments are prone. It is testified that, particularly in hot weather, chickens soon suffocate unless the fullest circulation of air through the cars can be constantly maintained. Shippers virtually admit that it is a hazardous traffic. By subsequent agreement with shippers in the middle west respondent proposes the continued application of second class rates on hauls not exceeding 300 miles to, from, or between points in Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, District of Columbia, Maryland, Virginia, or West Virginia, and not exceeding 400 miles between points outside of that territory, first class rates to apply on all longer hauls. The shippers mentioned forward live poultry to dressing stations at various western points, and ship dressed poultry outbound. Their maximum hauls of live poultry are about 500 miles, on which, they admit, their greater losses occur. By their suggestion the above modification is proposed. Shippers in the southeast object that their best markets are Baltimore and Philadelphia, Pa., approximating 500-mile hauls, and in that region dressing stations are not in use.

The record strongly supports the restriction of second class rates to hauls not exceeding 400 miles, but there does not appear to be any good reason for a shorter limit in the northeastern section of the country. The proposed increased rating, restricted to hauls exceeding 400 miles, has been justified.

### Trees, N. O. S., and Shrubs and Branches Thereof

On these articles, now rated second class, boxed, crated, or strawed and baled, it is proposed to apply first class rates. Besides the point that second class rates more appropriately embrace foodstuffs and drink, respondent shows that nursery stock is shipped in packages of irregular shape and often of great bulk and weight, in extreme instances having run as high as 1,000 pounds and as long as 25 or 30 feet. Shipments are practically confined to the spring and fall months, frequently going to small points at which respondent has only one man to deliver them. During the season it is often necessary to employ additional labor to load the cars. One of the large nurseries, in Illinois, ships its trees in boxes, 8 to 10 feet long, 2.5 to 3 feet square, the packages weighing from 200 to 300 pounds, and the more difficult to handle because heavier at one end than at the other. A representative of the American Association of Nurserymen cites shipments from a Lousiana nursery in bales ranging from 20 to 100 pounds, and opposes an increased rating in connection with increased rates as tending to discourage the movement of the traffic. On the other hand, certain Texas nurseries ship in bales weighing from 400 to 600 pounds. A representative of the Florida Railroad Commission points out that berry and vegetable plants take second class, and urges that there is no sound distinction between them and nursery stock. His contention that nursery stock also produces food would have no application to shade and ornamental trees and shrubs.

The proposed increased rating has been justified.

### Bicycles

A proposed addition to this item to prescribe the manner of packing for shipment is, to meet the only criticism and remove an ambiguity, now modified to read as follows:

> Boxed or crated, handle bars and pedals removed, tools and other loose parts securely boxed in one inside corner of box or crate containing bicycle.

As thus modified, the provision has been justified.

### Paid C. O. D.'s and Collections

It is proposed to increase the schedule of charges for collecting and remitting the proceeds of paid C. O. D. shipments. The proposed charges range from 30 cents for amounts not exceeding $5 to $3.25 for amounts not exceeding $1,000, the charges for greater amounts to be at the rate of $3.25 per $1,000, as tabulated in the schedule. The present charges are graduated both by the amounts collected and the first-class express rates between points of origin and destination, and range from 16 cents to $1.37. It is testified that the present charges are not compensatory for the work of collecting, accounting for, and remitting the proceeds of such shipments. The remittances are made by express money orders, and the proposed charges are made up of respondent's graduated scale of charges for those orders, plus 25 cents for the special service rendered. The increased charges have been challenged only in a general way as too high.

As the larger collections are reached the proposed ascending charges relatively grade down to less than one-third of 1 per cent of the amounts collected and remitted, and, while representing substantial increases, they have been justified.

### Beer and Ale

A proposed cancellation of the table of estimated billing weights on beer and ale in various containers, as no longer necessary in view of nation-wide prohibition, was protested at the hearing as premature pending a determination of the status of the liquor traffic by the Supreme Court of the United States. That tribunal having since sustained the constitutionality of the eighteenth amendment to the federal constitution and the enforcement statute thereunder, National Prohibition Cases, 253 U. S., ——, the objection presumably is satisfied. With respect to the request that the item be retained for application to cereal beverages of low alcoholic content, the record contains nothing upon which to base a finding concerning those commodities.

The proposed cancellation is approved.

### Cake, Pastry, Pies, and Ice Cream Cones

In the present item these commodities at pound rates applied to the net weight, minimum 27 cents, are rated second class. It is proposed to cancel the pound-rate and net-weight provisions and apply the published second-class package charges applicable to shipments weighing less than 100 pounds. This would increase the present charges. As cake in cartons is shipped in mixed packages with bread, to which the pound-rate and net-weight basis are applicable, the result would be to increase the charges on both bread and cake in such packages. Protestants urge that cake is a necessity practically as in the case of bread, and ask that the mixing privilege be retained as to those articles. The cake commonly shipped does not include the fancy varieties.

Except as to cake, the proposed cancellation has been justified.

The items herein found justified may be established in the regular way upon not less than five days' notice to the Commission and the general public.

No order is necessary.

By the Commission.

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## CINCINNATI NORTHERN LOAN

The Cincinnati Northern has applied to the Commission for authority to issue a ten-year 6 per cent promissory note for $113,000 to be made payable to the Cleveland, Cincinnati, Chicago & St. Louis. The purpose of the note is to cover a loan of that amount for additions and betterments.

# Tentative Reports of the Commission

## SAW MILL REFUSE CHARGE

It is the opinion of Examiner Henry C. Keene, expressed in a proposed report on No. 11281, Wausau Box & Lumber Company et al. vs. Chicago, Milwaukee & St. Paul et al., that the minimum charge of $15 per car authorized by General Order No. 28 on shavings and saw mill refuse from Wausau to Brokaw and Rothschild, Wis., was unreasonable to the extent that it exceeded the amounts that would have accrued from the application of the rates of 3 and 2.5 cents per 100 pounds applicable on the waste products in question. He thinks the Commission should award reparation.

This report does not condemn the $15 per car minimum charge in and of itself but it indicates the opinion of the examiner at least that the charge is high when it is applied as a charge of the removal of waste or by-product material, which, if it could not be transported by rail would not be utilized, because it is of such low value. Even on the rates per 100 pounds, the report points out, the return to the sellers of the refuse is small. It averaged $16.15 per car on the saw mill refuse and $2.22 per car on shavings. The material was sent to paper mills at Brokaw and Rothschild, distant six or seven miles from the mills where the refuse and shavings were produced.

Defendant, Milwaukee road, introduced cost studies to show that the cost of moving a car in July, 1918, was more than $20, so that even on the $15 per car minimum the railroad lost money, or rather the director general lost money. Keene pointed out a number of what he considered untenable assumptions. One was that the engines which handled the cars of refuse and shavings did no other work, while as a matter they switched other freight at the same time; another, that the cost of repairs on all cars was the same, while as a matter of fact it is not and that in this case the shippers used flat cars on which they constructed racks, which they also kept in repair, thus eliminating a part of the item of repairs from the cost study; and finally that the estimate of per diem for a shade over 12 days on each of the cars could not be accurate because the cars used were system cars on which no such payments were made, and that even if the cars were delayed at destination, the delays were covered by demurrage payments, assessed under an average agreement.

## PINEAPPLE STORAGE CHARGES

Examiner E. L. Gaddess has recommended the dismissal of No. 11668, Manufacturers' Clearing House vs. Director-General, as agent, on a holding that the domestic storage charges on 750 cases of preserved pineapples, stored at Mystic Wharf, Boston, while awaiting export to France, were properly assessed, because the shipment, as a matter of fact, was sold in the domestic market, and not exported.

There was no dispute as to the facts. The pineapples were part of shipment intended for export to France. Some time after their arrival at Boston the French government forbade the importation of luxuries and preserved pineapples came under that designation. Robert A. Hunt, who conducts his business under the name used in the complaint, contended that under the conditions he should not be called on alone to stand the loss of $900 caused by the act of the French government in forbidding the importation of luxuries.

Gaddess recommends a holding that the Commission has no power to permit a deviation from the published tariffs except in cases where it is shown the rates are unreasonable or otherwise in violation of the interstate commerce act.

## SCRAP TIN TO STREATOR

Attorney Examiner Arthur R. Mackley, in a tentative report on No. 11456, Vulcan Detinning Company vs. Director General, as agent, has recommended a holding that rates on scrap tin plate in carloads, from Oconomowoc, Wis., to Streator, Ill., were unreasonable to the extent that they exceeded $1.48 per gross ton prior to June 25, 1918, and $1.90 per gross ton after that date, 15 tons minimum, and that reparation should be made down to the basis of the two rates mentioned. The complaint was that the Class C rate of 11.1 cents applicable prior to June 25 and 14 cents subsequent to the date on which general order No. 28 became operative, were unreasonable.

## SALT CAKE TO INTERNATIONAL FALLS

In a tentative report by Attorney-Examiner A. R. Mackley on No. 11230, Minnesota & Ontario Paper Company vs. Baltimore & Ohio et al., he recommended that rates on salt cake, from Newell, Pa., Hegewisch and West Hammond, Ill., to International Falls, Minn., be held unreasonable and that reparation be awarded. Rates of 40.7 cents were imposed from the Illinois points of origin and 50.2 cents from Newell, Pa. The complainants contended they were unreasonable to the extent that they exceeded 16 cents from the Illinois points and 31 cents from Newell. Mackley recommended that the 40.7-cent rate be held unreasonable to the extent that it exceeded 25 cents and that the Newell rate was unreasonable to the extent it exceeded 42 cents.

## COCOANUT OIL FROM OKLAHOMA CITY

A finding of unreasonableness and an award of reparation have been recommended in No. 11453, Morris & Co. et al. vs. A., T. & S. F. et al., in a tentative report written by Attorney-Examiner Arthur R. Mackley. The complaint was that the fourth-class rate of 87 cents on cocoanut oil from Oklahoma City to Chicago was unreasonable because and to the extent of its excess of 35 cents, which was the commodity rate on cottonseed oil contemporaneously applicable. Mackley, on the authority of several other cases decided by the Commission on the same proposition, recommended the holdings before mentioned.

## AUTOMOBILE TIRE CARRIERS

Dismissal of the complaint on a finding that fourth-class rates charged by the defendants on automobile tire carriers from Detroit, Mich., to Flint, Mich., in the period from March 1, 1918, to August 26, 1919, were lawfully applicable and not unreasonable is recommended by Attorney-Examiner M. A. Pattison in a tentative report in No. 11356, Buick Motor Company (Division of the General Motors Corporation) vs. Director-General, as agent, et al. The complainant alleged that the rates charged were unlawful and unreasonable in that they exceeded the fifth-class rates contemporaneously in effect, and that the tire carriers were automobile parts and should take the fifth-class rates. The defendants contended that a tire carrier was not an essential part of an automobile such as to entitle it to the rating provided for iron or steel automobile parts, but that it was in fact an accessory.

## REPARATION ON STRAW

An award of reparation based on a finding that charges on numerous carloads of baled straw from Oldenburg, Ill., to Rockport, Ind., were unreasonable is recommended by Examiner E. L. Gaddess in a tentative report in No. 11715, United Paperboard Co., Inc., vs. Southern Railway et al.

Charges on the shipments, which moved during November and December, 1913, and January, 1914, were based on a fifth-class rate of 15 cents per 100 pounds. The claim was presented informally to the Commission June 22, 1914, but the complaint was not filed until August 11, 1920. The complaint contended the 15-cent rate was unreasonable to the extent that it exceeded the lower combination of rates contemporaneously in effect, 3.7 cents from Oldenburg to East St. Louis, minimum 20,000 pounds, and $13.50 per car from East St. Louis to Rockport.

Subsequent to shipment, the class rates were made inapplicable to shipments of straw between the points involved and the Southern Railway stated it was willing to make reparation on the combination basis in effect at the date of movement in so far as its respective proportion was concerned. Settlement was not made, however, because the receivers of the Chicago, Peoria & St. Louis, also defendants, declined to join with the Southern on the ground that the C. P. & St. L. was without funds to pay its proportionate share of reparation.

"Awards of reparation are not dependent upon the solvency or insolvency of carriers concerned," the examiner says. "Moreover, reparation is required in gross sum from all carriers defendant. Riverside Mills vs. A. & S. S. Co., 40 I. C. C. 501."

The examiner finds that the complainant is entitled to reparation of $450.51 with interest.

## RATES ON MONTANA COAL

Attorney-Examiner M. A. Pattison, in a tentative report on No. 11081, Roundup Coal Mining Company vs. Big Fork & International Falls et al., has recommended a holding that rates on coal from Roundup and Geneva, Mont., to destinations on the Chicago & North Western, Chicago, St. Paul, Minneapolis & Omaha and the Minneapolis & St. Louis in North and South Dakota are unreasonable and unduly prejudicial, in comparison with rates from mines in Illinois.

An allegation of undue prejudice caused by rates on lignite from mines in North Dakota to stations in South Dakota and Minnesota was withdrawn at the hearing.

Pattison said that the record clearly showed that the com-

plainant was excluded from the consuming territory served by the North Western, the Omaha and the Minneapolis & St. Louis, although the transportation service from the Roundup territory is materially less than from the mines in southern Illinois.

The attorney-examiner said that reasonable rates for the future would not exceed the following, plus the increases authorized in Increased Rates 1920: "To stations on the Omaha between Mitchell and Sioux Falls, both inclusive, $3.90; to all stations on the Minneapolis & St. Louis in South Dakota, between Leola and Watertown, $3.70, grading upward west of Conde at the present rate of progression to a maximum of $4.05 at Le Beau; to stations on the North Western between Oakes and Wolsey, Redfield and Watertown, Groton and Doland, and Wolsey and Iroquois, $3.70; between Watertown and Sioux Valley Junction, Iroquois and Brookings, and Iroquois and Salem, $3.90. To stations on the Gettysburg line of the North Western between Redfield and Pierre and between Wolsey and Pierre the rates should be graded up to a maximum of $4.30 at Pierre at the rate of progression observed under the rates now in effect. The record is silent as to rates to points in Minnesota, and they have therefore not been considered."

## RATES ON KANSAS CITY CRUSHED ROCK

In a proposed report on No. 11148, Prince-Johnson Limestone Company vs. Atchison, Topeka & Santa Fe et al., Examiner F. H. Barclay has recommended a finding that the interstate rates on crushed rock from Leeds, Mo., and Rosedale, Kan., both in the suburbs of Kansas City, Mo., to destinations within a radius of 150 miles from Kansas City, on lines of defendants other than the originating lines were, are and for the future will be unreasonable to the extent that they have been or may exceed by more than one cent, the contemporaneous rates on crushed rock from Kansas City to the same destinations.

Reparation was prayed in the complaint, but Barcley said there was no testimony to show that shipments had been made, hence he recommended a denial of the prayer for reparation.

A part of the complaint called into question the character of the reasonableness of the rate adjustments on crushed rock from the plants around Kansas City and on chat from the Joplin, Mo., district, where the chat is a by-product of zinc ore concentration. Crushed rock and chat come into competition for road-making, but, according to the examiner, the disadvantage of the complainant seems to arise from the fact that crushed rock is worth about $2 per ton, while chat is worth only about fifty cents, but that for construction purposes one is about as good as the other. Barclay came to the conclusion that the adjustment on the crushed rock and chat is not unduly preferential or prejudicial of chat and against crushed rock.

## ALLOWANCE FOR ICE AND SALT

While the Commission, in at least one formal opinion, has intimated that it has not the authority to require a common carrier to increase the allowance made by a railroad to a shipper for a facility of transportation furnished by the shipper, Attorney-Examiner Charles F. Gerry, in a tentative report on No. 11640, Swift & Company vs. Director General, as agent, seems to feel that it is within the competency of the Commission to order an increase. In his report to the Commission he recommends that the Commission hold that the rates charged by the defendant for the interstate transportation of less-than-carload shipments of dressed poultry, butter, eggs and cheese, from points in Illinois, Indiana, Iowa, Michigan were unreasonable to the extent that the allowance for ice and salt furnished by Swift & Company at the points of origin for the initial icing of the shipments was less than the actual cost, subject to a maximum of $4 per ton for ice and 75 cents per 100 pounds for salt. He also recommended an order of reparation from the amounts paid for the transportation of the shipments in question, made in the period from March 15 and September 5, 1919.

Gerry said that the shipper performed a transportation service when it furnished ice and salt, which it was impractical for the carrier to furnish at the points under consideration.

"By tariff provisions the shipper was hired to furnish the instrumentality of transportation," said Gerry. "The only question here is whether the allowance was reasonable. The defendant admits that the ice and salt cost more than was allowed." In Perishable Freight Investigation, 56 I. C. C. 449, Gerry pointed out, the Commission said that when a carrier allowed a shipper to furnish the ice and salt, the allowance should be on the basis of the charge for ice when it was furnished by the carrier; that is to say, if the carrier, under like conditions, elsewhere makes a charge of $4 per ton for ice and 75 cents per 100 pounds for salt, and those prices are not more than the cost, then the shipper should receive as much when it does the icing.

### St. L. S. W. LOCOMOTIVE PURCHASE

The St. Louis Southwestern Railway Company has applied to the Commission for authority to issue six promissory notes of $64,165 each to the Baldwin Locomotive Works in connection with the purchase of ten locomotives at a total cost of $513,320.

## SENATOR CUMMINS AND RAILROAD LEGISLATION

*The Traffic World Washington Bureau*

Passage of the bills pending in Congress, which would relieve the Interstate Commerce Commission of the duty of reporting in its railroad property valuation cases the cost of condemnation of carrier lands will be urged at the short session of Congress, which begins December 6, Senator Cummins of Iowa, chairman of the Senate committee on interstate commerce, announced November 19, on his return to Washington for the winter.

Other transportation legislation, particularly provisions relating to compulsory consolidation of the railroads into a limited number of systems and to prevention of strikes by railroad employes, he said, would be advocated by him later, but not at the short session. He expressed gratification that he had been re-elected with a plurality of more than 200,000 votes in the face of what he said was the most concerted opposition on the part of the American Federation of Labor, the four railroad brotherhoods and certain farmers' organizations, which have identified themselves with the organized labor movement.

"They had more than 150 speakers in the state prior to the election and they combed every part of the state thoroughly," said he. "The issue of the whole campaign was my record on railroad legislation and particularly my stand on the anti-strike provisions. I feel very much fortified, therefore, as the result of the election."

Senator Cummins expressed regret that Representative John J. Esch, chairman of the House committee on interstate and foreign commerce, had been defeated in the Wisconsin primaries. Referring to the opposition of organized labor to Mr. Esch because of the enactment of the transportation act, he commented on the fact that Mr. Esch had opposed the main provisions of the bill as it was passed and that he really was not responsible for the provisions which are claimed by organized railroad labor to be distasteful to them. After the bill was agreed upon in conference, of course, Mr. Esch supported the measure on its final passage.

Federal regulation of the railroads will not be on a proper basis until the railroads, through compulsory consolidation and federal incorporation, have been consolidated into a limited number of systems, so that each system will earn practically the same return as every other system, he said. Opposition will develop to compulsory consolidation and federal incorporation, particularly from the state commissions, the senator said, indicating that he did not expect to have smooth sailing in his efforts to put his ideas into law, but that in time it would be realized that what he advocated afforded a practical solution of the railroad problem.

Citing the situation in which the New England lines find themselves, Senator Cummins said his plan of compulsory consolidation would solve the financial problems of those railroads. He said there was not a New England road or roads that should be a separate system, as those roads were in reality nothing more or less than terminal lines for the railroads going into New England and that they should be made parts of the systems of the trunk lines going to the gates of New England territory.

Senator Cummins said three plans for compulsory consolidation had been submitted to him. These plans, it is understood, provide for not more than twenty systems.

The attention of the senator was called to the decision of the Commission in the New York passenger fare case, but he declined to comment as to the legal phases of that situation. He said, however, it was obvious that intrastate rates must be kept on a level with interstate rates.

Discussing the bills with respect to the valuation question, he said he had opposed the provision as to the ascertainment of the cost of condemnation, etc., of carriers' lands at the time the valuation act was passed in 1913, having pointed out then that the Commission was being ordered to do something it could not do and that it was absurd to require the report as directed by the statute. The bills which provide for repeal of the part of the valuation act involved were introduced at the last session in the Senate and the House by Senator Cummins and Representative Esch, respectively.

Enactment of legislation prohibiting strikes on the railroads is necessary in order to enable the government to enforce the findings of the United States Railroad Labor Board, the senator said, adding that he would do his utmost to have anti-strike legislation as to the railroads put through Congress. He said he believed in labor unions and that the labor provisions of the transportation act could not have been carried out without labor unions, but that interruption of transportation by strikes to enforce the demands of labor was against the public interest. He said he believed there had been a change of attitude on the part of individual railroad employes as to a government tribunal passing on wages and working conditions, and that railroad employes were coming to realize they would profit more by that system than by the use of the strike.

## ORDER IN NEW YORK CASE

*The Traffic World Washington Bureau*

The Commission, November 22, put the burden of going forward with litigation that may be possible under its decision in the so-called New York passenger fare case, on the states that may think the decision is beyond the scope of the new transportation act or that that law, as construed by the Commission, is unconstitutional as an infringement on the right of the states to regulate intrastate rates, fares, and charges. It did that by issuing a special permit under the sixth section of the interstate commerce law authorizing the carriers to file supplements to their tariffs with the Commission, on or before December 13, bringing into effect the higher rates, fares and charges.

Under that special permission (No. 51100), five days' notice to the public will be given, because the permission given in the report on the case (printed in full elsewhere) authorized the railroads to make effective rates on traffic within New York effective on December 18.

In the discussion as to how this matter might be brought into the courts, the ordinary thought was that the railroads would have to apply to the federal courts for injunctions forbidding state authorities to interfere with the collection of the rates brought up to the level of rates permitted in Ex Parte No. 74.

This special permission authorizes the carriers to file supplements that will not be in conformity with the technical rules governing the filing of tariffs, and do it on five days' notice. It specifically authorizes the special supplements to name rates, fares, and charges applicable to "New York intrastate traffic * * * to the extent authorized by the Commission in the said report," meaning its report on the New York passenger fare case.

Under that permission the tariffs and supplements on file with the Commission will authorize the collection of the higher rates. Any state or shipper who thinks there is anything wrong with the rates will have the burden on it or him to go into a court to show why he thinks so. In terms, it leaves nothing undone by the Commission that it could do to make effective its decision in the passenger fare case short of application for a mandatory injunction forbidding interference, in any way, on the part of state authorities.

The special permission, agreed on in conference November 20, and given to the public three days later, is as follows:

The Commission in its decision in Docket No. 11623, reported in 59 I. C. C. 290, having held that rates, fares and charges applicable on New York intrastate traffic result in undue prejudice, undue preference and advantage and unjust discrimination against interstate traffic, and

It appearing, That the increased rates, fares and charges, including rates on milk and cream applicable on interstate traffic established under authority of the opinion of the Commission in its decision in Ex parte 74 are restricted to interstate traffic, and that it is desirable to extend the application of these rates, fares and charges to New York intrastate traffic, to the extent authorized in the said report in as expeditious and inexpensive manner as possible:

It is ordered, That carriers and their agents are hereby authorized to publish and file special supplements to tariffs in the manner permitted by Special Permissions Nos. [illegible] of Aug. 5, 1920, and [illegible] of Aug. 9, 1920, such supplements to cancel present special supplements, or, if desired to be additional special supplements issued without regard to the number of effective supplements or the volume of effective supplemental matter, such supplements to cancel present clauses prohibiting the application of rates, fares and charges, including rates on milk and cream, to New York intrastate traffic, or to provide for the application of increased fares, rates and charges, including rates on milk and cream, on New York intrastate traffic, to the extent authorized by the Commission in the said report.

It is further ordered, That each schedule issued hereunder shall bear the following notation on its title page:

"The form of this supplement is permitted by authority of special permission of the Interstate Commerce Commission, No. 51100 of November 20, 1920."

This special permission runs to the form and manner of publication only and is void if the schedules issued hereunder are not filed with the Commission on or before Dec. 13, 1920.

Although Commissioner Ford's report on No. 11623, commonly known as the New York Passenger Fare case, was not instantly hailed as an epoch-making deliverance, the tendency within twenty-four hours of its rendition was to regard it as likely to settle the controversy over the control of rates, and settle it in favor of national control.

One of the first things that struck those familiar with the ways of Congress and the Supreme Court was that the making of the report at this time puts before Congress squarely the question whether it did or did not intend to give the Interstate Commerce Commission such control over rates that, for practical purposes, the state commissions will have nothing to do with the general level of rates. It was suggested that if the state commissions and their supporters believe, as they have argued, that Congress did not intend the Commission to go any farther than it had gone in the Shreveport situation cases, it should be easy for them to persuade Congress, at the coming session, to pass a bill making its intent so plain that the Ford report will fall to the ground, and compel the Commission to retrace its steps and specifically find the places, persons and traffic in New York, to which the New York rates give such an undue preference as to constitute an unjust discrimination against persons, places and traffic that must bear the interstate rates.

Another thought along that same line is that unless Congress does take some action, the Supreme Court will be compelled to assume that Congress does not agree with the contention of the state commissions that the federal body went farther than Congress intended. In the last analysis, it is generally believed, the real question before both Commission and court is what was the intent of Congress, on the broad question of state versus national control, and that the Supreme Court will not think much of the refinements of that questions that were discussed. Still another thought is that the court, if it is compelled to go deeply into the subject, will look at the car service amendment to the first section and find the all-embracing terms used therein, to buttress the belief that Congress, in all recent legislation, has been aiming at national control over transportation.

The question is expected to reach the courts through moves by the railroads to put an end to litigation in the state courts by going to the federal courts for mandatory injunctions, the effect of which will be to give force to the order of the Commission, directing the substitution of the rates prescribed in Ex Parte No. 74, for the passenger fares, milk, cream and excess baggage rates now in force in New York, and the imposition of a transportation surcharge for the privilege of riding in Pullman cars. The order of the Commission assumes that the railroads in New York, of their own volition, have discriminated against interstate commerce. Therefore they are directed to remove it, on or before December 18, on not less than five days' notice. That was the assumption in the original and sequel Shreveport cases. The orders in none of them nor in this case, do not mention the rates as having been forced upon the railroads by state authority.

So far as the form of the order in this case shows, the Commission did no more than apply the principles enunciated in the Shreveport case, which it is contended, is what Congress intended. One of the suggestions in the discussion caused by the report and order is that there is nothing in either report or order on which the Supreme Court, even if it were so inclined, could put its finger, and say there had been a failure to do more or less than Congress intended.

The thought that what Congress does or fails to do at the coming session will have an influence on the Supreme Court is based on the fact that, fundamentally, it is a question of policy. By no stretch of the imagination could vested rights become involved in any of the litigation. A railroad can not have a vested right in a rate. Nor can a shipper.

So long as a rate is not confiscatory, it is as much subject to the power of Congress to say what it shall be as it is for Congress to say what is or is not an intoxicating alcoholic liquor. In the Minnesota cases, it has been contended, the court pointed out that if and when Congress decided to give the Commission power over state rights, the power of the states would be at an end.

In view of that and other decisions, the assumption that the Supreme Court will watch Congress for light on the question of its intent in passing the Esch-Cummins law, is not believed to be a violent one. Were the decision to involve any question of property rights, what Congress might do or fail to do at the coming session would not have any weight with the court. The fact that Congress said the railroads should have 5.5 or 6 per cent return on the value of the property devoted to transportation, it is suggested, does not constitute a property right. The fact that a passenger from New York city to Buffalo may now travel for about $11.36 is not a property right, so the Commission's decision depriving him of it gives him no more standing in court than had the sugar planter in Louisiana to complain when Congress said the duty should be reduced one-third and then, at the end of three years, wholly removed.

Rates on railroads and duties on imports are legislative matters entirely and their imposition, increases or removal are matters of policy for Congress to decide, without limitation except that a railroad's property must not be confiscated by means of rates too low to permit a reasonable return on the investment.

Some kind of a stir in Congress next month will not be unexpected, if it comes. Nor would it be surprising if the lawmakers ignored the case and allowed the Supreme Court to pass on it without light from it, in the form of further legislation. Failure, however, to legislate, as before suggested, would probably be taken by the court as indicating that Congress does not agree with the contention that Congress did not intend the Commission to go as far as it has gone in the New York passenger fare case.

Back of the question of the intention of Congress lies the question whether Congress has the power to deprive the states of power over rates, but that has not been regarded as so likely to be seriously raised as the one regarding intention. The Minnesota Rate Cases have been taken generally as indicating that the court intended to say that Congress has the power to regulate intrastate rates as an incident to its power to regulate commerce between the states and with foreign nations. Some of the state authorities, in their briefs, have contended that

Congress has not that power of depriving the states of regulation of rates.

In reply to an inquiry as to what would be the results of the decision in the New York case, John E. Benton, general solicitor of the National Association of Railway and Utilities Commissioners, said:

"There is only one result that we can say will certainly follow. That is a decision as to the validity of the Commission's order from some court of competent jurisdiction. The Interstate Commerce Commission is an administrative board. Of its ten members four are lawyers. No one will question that the decision just rendered is the expression of their conscientious judgment as to what they ought to do. No one will question, either, that their opinion is entitled to great respect. But the main question involved in this case, as Commissioner Eastman said in his dissenting report, affects the very basic relation between the state and federal governments. Such a question can not be finally decided by an administrative board. The case will finally be brought before the United States Supreme Court, which alone can conclusively determine whether the Commission has or not sought to enter a field which Congress never intended it to enter. Until that decision has been obtained it is not worth while to spend time speculating as to what results may follow if the Commission's order is sustained.

"I will not attempt to guess in what proceeding or court the question involved will first be raised. The carriers, I suppose, might seek to take advantage of the order of the Interstate Commerce Commission as a defense in the pending mandamus proceedings in the New York Supreme Court, or they might seek by injunction in the federal courts to enjoin further attempts on the part of the New York authorities to enforce the New York statutes, or the New York authorities might move to set aside the order in the federal district court in New York under the federal statute applicable in such cases. I am not advised as to the purposes of any of the parties immediately interested. In whatever court the question is first raised, it is a federal question and beyond doubt will finally come to the United States Supreme Court."

## W. VA. INTRASTATE RATES

*The Traffic World Washington Bureau*

The public service commission of West Virginia, according to a report from it to John E. Benton, general solicitor of the National Association of Railway and Utilities Commissioners, has entered an order permitting the railroads in that state to increase intrastate passenger fares 20 per cent except where the present rate exceeds 3 cents per mile. The commission denied the carriers' application as to the Pullman surcharge of 50 per cent when applied to "seat passengers."

The following bulletin regarding the action of the West Virginia commission was sent to the state commissions by Mr. Benton:

"It will be remembered that the public service commission of West Virginia granted carriers' application for increase in freight rates, but withheld decision as to passenger fares and related rates pending further investigation and consideration. On November 15, 1920, the commission handed down its final order.

"From the report it appears that, in marked contrast to the way they proceeded in Arizona and Nevada, carriers, in conformity with a ruling of the commission, offered evidence as to the revenues and expenses of their intrastate passenger business. From exhibits presented it appeared that the weighted average ratio of operating expense to revenue for six months ended June 30, 1920, adjusted by treating the Labor Board award as retroactive, was 107.15 per cent; also that only one railroad made any profit in its intrastate passenger business, and that one less than a fair return.

"The conclusion reached by the Commission is stated in part as follows: It is the desire of this Commission to co-operate with the Interstate Commerce Commission in the matter of rate regulation, whenever the facts will justify it, so as to maintain the parity between state and interstate rates and thus avoid unjust discrimination. In this case, under the showing as made by the carriers, we are of opinion that their present rates for intrastate passenger service are unjust and unreasonable, and that the increases sought by this application should be allowed, except as herein otherwise provided. * * We are of opinion that the twenty per cent increase in passenger rates prayed for in this application should not apply where the present rate exceeds three cents per mile. We are further of opinion to refuse to allow the proposed Pullman surcharge where the same applies to seat passengers, whether carried in Pullman or parlor cars. * * We believe that such a rate, if not prohibitive, would tend to discourage the short distance rider and would have the effect of not only reducing the revenue of the Pullman Company but would operate to further crowd the already overcrowded day coaches, and probably result in loss to the railroads by reason of the failure of the Pullman Company to earn the minimum guaranteed to it by the railroads.

"Increases allowed are to continue in effect till July 1, 1921. Carriers are ordered within 15 days after June 15, 1921, to report the results of their intrastate passenger operations, and the value of their investment therein."

### HEARING IN KANSAS CASE

In an order in No. 11916, Kansas Rates, Fares and Charges, the Commission has set for hearing at Topeka, Kan., December 20, before Attorney-Examiner Disque, the petition of the railroads operating in Kansas for an order by the federal commission directing the establishment of intrastate rate increases equivalent to the interstate rate increases authorized in Ex Parte 74. The Kansas Court of Industrial Relations permitted an increae of only 30 per cent in intrastate freight rates, while the I. C. C. increase was 35 per cent. It also denied increases on passenger traffic and made certain exceptions to the 30 per cent advance in freight rates.

## ISSUANCE OF SECURITIES

*The Traffic World Washington Bureau*

The Commission will begin a general hearing at Washington December 1 on questions relating to the issuance of securities under Section 20-a of the interstate commerce act by railroad companies that have been reorganized as a result of receiverships or otherwise. The investigation also will involve "the matter of granting authority to carriers under section 20-a of the interstate commerce act to issue securities pursuant to plans for the reorganization of certain carriers, for the consolidation of the properties of certain carriers, and for both such reorganizations and consolidations, and the application of paragraph 6 of section 5 of the interstate commerce act to such consolidations."

Paragraph 6 of section 5 of the act relates to consolidation of two or more carriers with the approval of the Commission under certain conditions set forth in that paragraph.

The Commission's order, which was entered in Finance Docket No. 1078, sets forth:

It appearing, That questions have arisen, in cases not involving the consolidation of properties of carriers, as to the power and duty of the Commission to authorize the issuance of securities of a total par value which would not be in excess of the total par value of outstanding securities and other obligations which it is contemplated will be funded, retired or replaced by, or upon, the issuance of the proposed securities, but which, if authorized and issued, would or might be of a total par value in excess of the total value of the property of the issuing carrier; and

It further appearing, That questions have arisen, in cases of such proposed consolidations and in cases not involving such consolidations, as to the power and duty of the Commission to authorize the issuance of securities to fund the par or other value of capital stock issued for a consideration less than its par value, discounts on funded debt, accrued interest or other fixed charges, operating losses and other items not represented by actual additions to the property, or contributions to the capital accounts of the carriers.

It is ordered, That this matter be, and the same is hereby, set for hearing of those who desire to be heard in the premises, to be followed forthwith by argument, at 10 a. m., on December 1, 1920, at the office of the Commission in Washington, D. C.

Notice of the hearing was served on Alfred P. Thom, general counsel, Association of Railway Executives, and Bird M. Robinson, president, American Short Line Railroad Association.

## ALLOWANCE FOR MAINTENANCE

*The Traffic World Washington Bureau*

The Commission will hold a hearing December 4 on the question of determining the basis on which the carriers should be allowed amounts for maintenance during the period of federal control and the guaranty period. The matter in issue has been discussed at length in briefs filed by the carriers and the Railroad Administration to which extended reference has been made in The Traffic World. The Commission's notice of the hearing follows:

The Commission having under consideration the fixing of amounts to be included in operating expenses of carriers subject to the provisions of Section 209 of the Transportation Act, 1920, for maintenance of way and structures or for maintenance of equipment, pursuant to the requirements of paragraph 3 of subdivision (f) of said section; and

It appearing, That questions have arisen in respect of the interpretation of the rule set forth in the proviso in paragraph (a) of Section 5 of the "standard contract" between the United States and the carriers, and particularly in respect of the allowances and adjustments to be made because of the differences in the costs of labor and materials;

It is ordered, That a hearing in the aforesaid matters shall be held at the office of the Commission at Washington, at 10 o'clock a. m., on Saturday, December 4, 1920.

It is further ordered, That copies of this order be sent to all carriers which filed acceptancts of the provisions of said Section 209, to the United States Railroad Administration, to the Association of Railway Executives, to the American Short Line Railway Association, and be given to the public press.

### PACIFIC CAR DEMURRAGE

The report of the Pacific Car Demurrage Bureau for September, 1920, shows 13,767 cars held overtime, or a percentage of 06.89, as against 10.926, or a percentage of 05.03 for the same month last year.

# DIVISIONS FOR NEW ENGLAND

*The Traffic World Washington Bureau*

Attempts by New England carriers to obtain larger revenues by means of increased divisions out of joint rates with eastern trunk lines rather than by another increase in rates, will provoke an inquiry by the trunk lines as to the efficiency of the operation of the New England lines, and resistance by western lines and short lines on the ground that they are also entitled to increased divisions from trunk lines, and that satisfaction of the New England demand may leave the trunk lines without any funds to be given to the short lines. These things, as results of the attempt of the New England carriers to improve their situation without laying additional burdens on the shippers, were indicated at an informal conference held by the Commission November 22. That conference was the outcome of the conference November 10, between New England lines and industries served by them.

While the question of the proper divisions to be paid by the trunk lines is raised in a formal way by the complaint filed by the New England carriers, the Commission was willing, in an informal way, to find out whether the end sought by the complaint could be attained speedily and without completing the formal proceeding initiated by that complaint. That is what Chairman Clark of the Commission told those attending the conference when he called it to order.

In a way of speaking, the conference was a fair sized town meeting, in which all the parties in direct and indirect interest were numerously represented. In fact, those attending filled the hearing room of the Commission to capacity. In point of attendance it looked like the initiation of another general rate increase.

The results of insistence by the New England lines on larger divisions from the trunk lines were indicated by statements made by Charles R. Brock, receiver of the Denver & Salt Lake; Bird M. Robinson, president of the American Short Line Railroad Association; and Daniel Willard, speaking as one of the trunk line executives. Mr. Willard said the trunk line executives had not decided, as a body, what their attitude in the matter would be.

New England carriers and New England shippers, in the conference, were welded into one body in support of the proposition that the divisions paid the carriers in the northeastern corner of the country are not as large as they should be, and that rates are already so high that any addition to them will prove disastrous to the industries of that part of the country. The New England carriers were represented by Charles F. Choate, jr., and Wilbur La Roe, jr., until recently chief examiner for the Commission.

In a statement in behalf of the New England carriers, Mr. Choate said that the best estimate, based on returns for September and October, indicated that, for the current twelve months, the net railway operating income would be $40,000,000 less than enough to pay 6 per cent on the value of the property devoted to transportation and $22,000,000 less than necessary to meet fixed charges.

He said that in the recent advanced rate case the roads in the eastern district, by the inclusion of the property of the New England carriers, obtained $25,000,000 more than they would have obtained had the New England roads not been included, and that, therefore, the divisions to the New England roads should be increased rather than further burdens be placed on the already distressed industries of that part of the country.

The position of the New England carriers was supported by State Commissioners Bliss, of Rhode Island, Cleaves, of Maine, and Dutton, of Vermont. New England shippers spoke through E. K. Hubbard, of the Connecticut Manufacturers' Association and a temporary organization of shippers; and James Q. Guinac, of the Foreign and Domestic Commerce Association of Bangor, Me. Without exception state commissioners and shippers' representatives said both the railroads and the shippers in New England face a serious if not disastrous condition, with some of the industries operating only three days in each week and unable to stand further burdens. The shippers' representatives said they had assented to the recent increase in rates because, as Mr. Hubbard said, they realized the industries had grown but the railroads had not.

The purpose of Mr. Brook was to say that it was the desire of at least one western road to give notice that it did not wish the case foreclosed as against it on the statements made in behalf of the New England carriers; that the idea which pervaded the recent addition to the law is that the public must be efficiently served.

"If Congress has the power to take money from the prosperous roads for the benefit of those not so prosperous," said Mr. Brock, "then it has the power to prescribe divisions, through this Commission, so that the efficiently managed and prosperous road must give the less prosperous road divisions out of proportion to the service rendered."

In his discussion of the matter, Mr. Robinson said the language under which the New England carriers were asking for a larger division was suggested by him and the other men of the short line association with a view to having something in the law for the protection of the short line not able to meet the long line in negotiations on terms of equality. It was not intended, he said, that the Commission should decide every question of divisions that might be raised. The thought was that such matters could be settled by conferences which would be held when the strong lines could see that the law required them to deal not by strong-arm methods, but by the rule of equity. He said that if the New England and trunk line carriers did not settle the question of divisions, the short lines would insist on going fully into the matter, thereby protracting the proceedings materially.

Mr. Willard said that "some of us in trunk line territory think this is a New England problem to be settled by New England carriers."

"New England divisions, tested by any established rule," continued he, "are larger than the divisions for similar services elsewhere.

"It is not true that the trunk lines got all they asked. Therefore, it is not true that they obtained $25,000,000 more than they would have obtained of the property of the New England lines had not been included. We did not obtain what we suggested on an inter-territorial business.

"If the eastern trunk lines are to be asked for larger divisions, at least some of the executives may want to know about the management of the New England roads, with a view to determining for themselves whether the disbursements made are wisely made. There are rates in New England that trunk lines do not believe to be compensatory. That may be a New England question now, but when trunk lines are asked to pay larger division, it becomes a question in which trunk lines have an interest. Some trunk line executives believe New England carriers are rendering services for which they are not fully compensated."

At the afternoon session, L. F. Loree, president of the Delaware & Hudson, by way of answer to suggestions that some of the New England lines would have to go into receiverships if they did not get larger divisions or higher rates, said he had consulted with a number of persons in whom he had great confidence and they had expressed the belief that as between the trunk lines not earning their dividends and New England roads going through receiverships, the latter would be preferable. Mr. Loree said that the situation was not beyond the hope of relief through rational handling. He said there were facts in the reports of the financial statements of New England roads which he could not understand or explain. One such fact was that about 32 per cent of the revenues of the New England lines came from passenger business, while in eastern trunk line territory only about 14 per cent and in Central Freight Association territory about 16 per cent of the revenues came from that traffic.

"Why do New England people seem to be traveling about twice as far as the people in the other sub-divisions of the eastern district?" he asked.

The query raised a laugh, but the implication was not missed. It is that the New England roads run too many passenger trains, which, with few exceptions, are not great contributors to the net railway operating income.

"I see no way for the Delaware & Hudson to obtain from its connections any of the money it might be asked to give to the New England roads in the form of increased divisions," said Mr. Loree, who, earlier in his remarks, had said that a considerable reduction in ton-miles was expected in 1921, so that the real test of the new rates and the new law would come in that year.

Samuel Rea, president of the Pennsylvania, said he could not agree to go voluntarily into a conference with the New England lines with a view to giving them larger divisions. He thought such an act would be beyond the power of an executive or even a board of directors. That was his answer to the suggestions, frequently made, and especially by President Robinson, of the short line association, that it was the thought of those who had framed the new part of the act that the railroads should confer on the question of proper divisions and not come to the Commission to prescribe them. The Pennsylvania, he said, in accordance with a policy of long standing, invested in the stock of the New Haven, that policy being to put money into the securities of connections. It holds that stock now.

"We think our divisions with the New Haven are not only fair but liberal," said he. "To give divisions more than liberal is something I cannot agree to. Nor can I agree, voluntarily, to enter into negotiations with that end in view."

"What do you say to the suggestion that receivership is preferable?" asked Commissioner McChord.

"Mention of receivership for a railroad is always a serious thing," said Mr. Rea. "It must be remembered, however, that next year will be the real test and contributions that the trunk lines are asked to make, if compelled to make, might make it impossible for them to earn a proper return on their investment."

Prior to the utterances of the two presidents indicating the opposition of the trunk line executives, even to negotiations with the New England roads on that subject, Robert C. Wright, general traffic manager of the Pennsylvania, went into the allegations of the New England carriers about their probably poor financial showing, the question of their divisions in contrast with the divisions which the trunk lines receive from the New England carriers, and the possible sources of greater revenue. He said:

"The New England carriers claim, in support of their demand for increased revenue, that unless increased revenue is provided their net railway operating income will be approximately $36,000,000 less than a 6 per cent return on their aggregate property investment accounts, and approximately $18,000,000 less than the amount necessary to meet their fixed charges.

"It is submitted that up to this time it is impossible to estimate the results either for roads, for groups of roads, or for territories from the increases under Ex Parte 74, as so many factors have arisen which affect the resultant revenues and expenses that no reliable figures are as yet available.

"Moreover, experience is limited to the month of September, which month is well known not to have fully represented the effect of the rate and fare increases, and the accounts for which month include many adjustments and lap-overs, incident to the guaranty period. It is our opinion, therefore, that the figure of $18,000,000, which we understand is presented by the New England roads as the necessary additional amount to cover the interest on their funded debt, cannot be considered accurate or as representing the actual needs, if any, for that purpose.

"Moreover, a committee of the trunk lines is of the opinion that certain situations in New England have contributed largely to the alleged need for financial assistance and should be carefully considered in determining what, if any, assistance is required from the lines west of New England, namely:

"A.—The fact that the expenses of the New England lines have been largely increased by the peculiar fuel coal situation recently existing, it being our information that this year a very large tonnage of coal was purchased by New England lines in the open market, at prices somewhere near $6.00 per ton more than the contract price, resulting in a very large increase in expenses which is not likely to continue, or occur again;

"B.—The probability that with the increase in ocean tonnage the water rate from Hampton Roads to New England will be materially reduced, thus decreasing the cost of fuel coal from that territory;

"C.—The fact that the New England roads participate in all rail differential routes to the west, some of which are circuitous, thereby depleting their revenues;

"D.—The existence in New England of commodity rates for the transportation of various classes of traffic, which in other territories move generally under class rates;

"E.—The continuance on the part of New England lines of water competitive rates, when the water competition has for some time been non-existent;

"F.—The extension of the New York westbound rate to apply all the way from Bangor, Maine, and the blanketing of the eastbound rates from western territory to the whole New England territory on the Boston basis extending as far east as Bangor, Maine;

"G.—The failure up to date of the New England lines to secure the benefit of the Anderson scale of class rates, because of the rate adjustment just beyond the gateways;

"H.—The detention of cars in New England, resulting in heavy per diem balances.

"Your committee is of the opinion that all of these matters should be fully considered before the final needs of the New England roads in the matter of assistance are determined.

"A study of the divisions in effect between trunk line carriers and New England show that the present divisions to the New England roads are more than equitable, for the following reasons:

"A.—They exceed division which might be worked out on a straight mileage basis;

"B.—They exceed divisions which might be worked out on a basis of 50 miles blocks with 50 miles for each terminal line;

"C.—They exceed a rate prorate division. An analysis of traffic between trunk line territory and New England territory shows that the trunk lines receive divisions equal to 55 per cent of their local rate while the New England road receive divisions equal to 60 per cent of their local rate; and indeed, if comparable mileages are taken in trunk line and New England territories, it shows that the trunk lines receive only 51 per cent of their local rate, while the New England roads receive 66 per cent of their local rate. As a result of the present divisions, statistics show that the New England lines enjoy on interchange traffic a ton mile revenue 50 per cent greater than that of the lines in Trunk Line Territory and that for similar mileage hauls they secure on an average 30 per cent in excess of the ton mile revenue of the lines west of the Hudson River.

"The favorable result of the present divisions to the New England lines arises from the following situations:

"A.—By the grouping of their stations into large groups for division purposes, thereby securing more than an actual mileage prorate on short haul traffic;

"B.—By the use of constructive distance in excess of actual distance between junction points and the furtherest point in each group;

"C.—By taking terminal deductions from joint rates before prorating, which are not allowed to the terminal carriers west of the Hudson River."

Frank H. Alfred, president of the Pere Marquette, said he desired to talk on the subject because, in 1907, the Commission pointed out the similarity between the condition of railroads in Michigan and in New England. He said that the Commission had recommended the making of district rates in both territories. The Michigan carriers, in 1917, had suggested four districts or zones in Michigan, but the Commission provided for only two districts. He wondered why New England had not been handled on the plan suggested for Michigan.

"I am in sympathy with the idea of sustaining the prestige of New England, as suggested by one of the speakers this morning, if it costs nothing more than sympathy," said Mr. Alfred. "But if it costs money, I am opposed, because, on the known facts the New England carriers are in no worse condition than railroads in other parts of the country. A look at the operating ratios of carriers shows that they did as well in September as roads in other parts of the country. Of course there are exceptions, the Union Pacific and Southern Pacific, for instance, but they are not typical railroads."

Charles F. Choate, jr., for the New England carriers, commenting on Mr. Willard's suggestion that New England rates are too low, said he thought the New England average scale was higher than the average in trunk line and Central Freight Association territories. The general average in official classification territory was $1.33 per ton; on the New Haven, for three months in 1919, it was $1.94 and on the Boston & Maine, $1.63. The average per ton-mile for official classification territory was 8.5 mills; New Haven, 17.5 mills, and Boston & Maine, 11.33 mills.

"Divisions to the New England lines are conceded to be larger," said Mr. Choate, "than to other lines for similar distances, but that is because it has been admitted that the cost of transportation there has been greater and because the New England roads have great terminal expenses and an average haul of only 100 miles.

"As to the non-application of the Anderson scale, the answer to that is that the Anderson scale was applied in full but when the director general found that it violated the fourth section, he ordered that the fourth section violations be eliminated."

As to the cost of fuel, Mr. Choate said that while the price at the mines has been reduced, the increased cost of getting it to the engines in New England is fully equal to the reduction in the price at the mines.

Chairman Clark, when Mr. Choate had finished, said that obviously the country had gone from the troublesome days of war to the troublesome days without war. The underlying idea of the law, he said, was that there should be helpful co-operation in working out the problems. The Commission, he said, had no views on the matter that had been presented, but he said that if further conferences would tend to bring about an agreement, the railroads needed to do no more than suggest such informal meetings as had just been held. He said that if the executives of the trunk lines cared to hold a conference on the subject they might have the use of the room in which the talking had been done.

### Executives Confer

The hint was taken and, as a result, the executives of New England, Trunk Line and Central Freight territories appointed a committee to see what could be done.

The committee appointed consists of Samuel Rea, of the Pennsylvania; F. J. Underwood, Erie; A. H. Smith, New York Central; W. H. Truesdale, Lackawanna; W. M. Duncan, Wheeling & Lake Erie; E. J. Pearson, New Haven; J. H. Hustis, Boston & Maine; Morris McDonald, Maine Central; F. H. Alfred, Pere Marquette; W. H. Williams, Wabash; and Bird M. Robinson, president of the Short Line Association.

An idea prevalent among those who keep railroad executives informed as to what is likely to be the attitude of commissioners on a given subject, is that the Commission will insist on a settlement, by negotiation, of the question of divisions for the New England lines. Some of the executives who took part in the conference following the public hearing on November 22, got the impression from what Chairman Clark said, at both the opening and the closing of the hearing, that the Commission will not look with favor on the railroad executive who fails to make an honest effort to save the Commission from the hard task of examining the whole situation and forcing it to pass on the question from a purely legal point of view.

Chairman Clark, in opening the conference, expressed the hope that the executives would be able to compose the matter. The significance of his remark at that time was not as plain as it became when, at the end of the hearing, he said the hearing room of the Commission would be at the disposal of the executives if they cared to confer on the subject. That remark was taken as indicating that the commissioners intended them to get together notwithstanding the opposition they had publicly expressed to any negotiations on the subject. Chairman Clark, in closing the hearing, observed that a formal case on the subject would mean the taking of much testimony and the consumption of much time.

The New England lines, in their presentation of the subject, indicated that time is the essence of the whole matter; that they must have more revenue, and that speedily, to avoid the danger of default on some of the bonds that are now acceptable as savings bank investment. Default in the interest would remove them from the list of things in which savings may be invested and

create a situation in New England that would have a bad effect on the rest of the country.

In the conference on November 10 Judge George W. Anderson, former member of the Commission, said that the only effect of receiverships for New England railroads appeared to be a change in the directors and the ruin of honest investors. His language indicated that, to him, receiverships were not a way out of a bad situation, but a way into a still worse situation.

Bird M. Robinson, president of the American Short Line Railroad Association, in a discussion of the question of divisions, raised by the New England railroads, intended for the benefit of members of that association, has made declarations which, it is believed, show that the short line railroads, believing that they procured the legislation under which the New England roads are proceeding, will not permit the revenues of the trunk lines to be depleted for the benefit of New England carriers, unless and until the interests of the short lines in the revenues of their trunk line connections have been taken care of. Mr. Robinson said:

"The question of the division of joint rates has been precipitated before the Interstate Commerce Commission at a time, in such a way, and by parties, that is surprising, and we fear may prove to be seriously detrimental to the interests of the short line railroads.

"Thet runk roads of New England have filed with the Interstate Commerce Commission a complaint asking for twenty-five million dollars ($25,000,000) from the roads 'west of the Hudson River' as an increase in their divisions, and have made 186 members of this Association parties defendant.

"It is a well-known fact that this Association made the fight before Congress to confer upon the Interstate Commerce Commission the power to make divisions of joint rates; that it prepared the rule of divisions, now incorporated as paragraph 6 of Section 15 of the Interstate Commerce Act, and that Congress acted in that respect in response to the efforts of this Association, for the especial protection of short line railroads.

"It is not generally known, however, that the principal roads in New England supported the forces that attempted to defeat this Association in its efforts to have Congress confer upon the Commission the power to make divisions, and especially attempted to defeat the rule governing the making of divisions.

"It may, or it may not, be significant that these trunk roads now rush to the Commission and seek to conduct the contest in respect to divisions, and thus attempt to secure such interpretation and rules as they may desire.

"It may, or it may not, be significant that these trunk roads deliberately ignored this Association when preparing and presenting their case; and that these roads should deliberately ignored the officers of this Association, notwithstanding they have demonstrated that they know more about the divisions question than any other men in the country—men who were big enough, wise enough, and strong enough to collect the information, prepare the case and convince Congress that it was necessary to authorize the Commission to make divisions of rates; to prepare the rule governing such divisions, and to induce Congress to grant such authority to the Commission, notwithstanding great and influential opposition.

"It may, or it may not, be significant that they preferred to originate and conduct the litigation before the Commission through men who have but little, if any, knowledge of the situation, but who have no obligations to or interest in the short line railroads.

"We have no doubt but that the condition of the majority of the roads in New England is bad—some of them very bad—and we earnestly hope that some plan can be adopted which will afford them necessary temporary relief. We will be glad to aid in any legal or equitable way that we can to accomplish that result, but we cannot permit that sympathy and good will to interfere with our duty to protect the rights of the members of this Association.

"The condition of a great majority of the members of this Association is bad; in most cases it is much worse than that of the New England roads, hence all such members must not only have an opportunity to be heard, but they are entitled to have adequate time in which to prepare their answers and not only make proof as to their own condition, but should circumstances force it, very carefully to examine all the evidence presented by the New England lines and by all other lines.

"The law fixes the cost of the service not 'first come, first served' as the basis for the division of joint rates, and it is apparent that the Commission cannot ascertain the cost of the service on the numerous roads interested, except after very full investigation and consideration.

"Short line railroads that require an increase in their divisions are especially interested in the case presented by these New England roads, particularly such lines as are located in the Official Classification Territory, for the reason that if the Commission grants the prayer of the complainants, it may decrease the already inadequate divisions of such short line railroads."



# Loss and Damage Decisions

**Cases Recently Decided by State and Federal Courts**



## DELAY IN TRANSPORTATION OR DELIVERY

**Pleading:**

(Supreme Court of Colorado.) A complaint against a terminal carrier for delay in a shipment of live stock, which alleged that the initial and terminal carriers with another had associated themselves together into a system, and that each member was fully authorized to contract for the shipment of live stock freight over the system, sufficiently alleges that the contract entered into in the name of the initial carrier was also the contract of the terminal carrier, so that a breach of the contract, occurring on either line, created a joint obligation against both carriers.—Martin vs. Union Pac. R. Co., 192 Pac. Rept. 506.

## CARRIAGE OF LIVE STOCK

**Damages from Shrinkage:**

(Supreme Court of Kansas.) Because of the carrier's negligence, cattle shipped to the Kansas City market did not arrive in time for Thursday's market, and were held over until Friday. Friday was a regular market day, but the market was inactive, the cattle did not sell, and they were held over until Saturday, when they were shipped to another market. Held that, for the purpose of computing damages resulting from shrinkage in weight consequent upon the negligent delay in delivery, the cattle were delivered for the Friday market, and that damages resulting from shrinkage subsequent to delivery should not be allowed.—Anderson et al. vs. Atchison, T. & S. F. Ry. Co., 192 Pac. Rept. 755.

**Negligence:**

(Supreme Court of Kansas.) It is not within the province of the jury to indulge in mere conjecture and speculation for the purpose of finding negligence.—Beeler vs. Atchison, T. & S. F. Ry. Co., 192 Pac. Rept. 741.

In an action against a carrier to recover for injuries to a shipment of colts and mares, it was alleged the injuries were caused by negligence of the defendant's employes, who, in attempting to attach the car to the freight train, carelessly and negligently backed the engine against it with great speed, force and violence, by which several of the animals were knocked down and killed and others maimed and injured. Held, that a motion to set aside a finding that the injuries to the animals were caused by negligence in making the coupling and starting the engine should have been sustained because it was unsupported by evidence.—Ibid.

**Liability for Damages:**

(Supreme Court of Nebraska.) A railroad company is liable for damage to live stock carried by it, except for such damage as results from the act of God, the public enemy, the fault of the owner, or the natural propensities of the animals.—Nye-Schneider-Fowler Co. vs. Chicago & N. W. Ry. Co., 179 N. W. Rept. 503.

When live stock, unaccompanied by a caretaker, is received by a railroad company in good condition and is delivered later to the consignee in a damaged condition, a prima facie case is made against the railroad company by reason of a presumption that the damage resulted from some cause other than one which would exempt the company from liability.—Ibid.

**Presumption of Liability:**

Such presumption is not evidence, and expires when sufficient evidence is introduced of the facts, out of which the damage grew to support a finding that the damage was from a cause for which the company would not be liable.—Ibid.

**Evidence:**

A book record kept by the stockyards company, of dead and crippled animals received in shipment, kept in regular course of business and as a record upon which the transactions with the packing companies purchasing hogs, is based, is not rendered incompetent, as not being a book of original entry, from the fact that the entries are made by a clerk from data collected by various other employes.—Ibid.

**Liability of Initial Carrier:**

When a railroad company makes a contract to deliver live stock at a point beyond its own line, it becomes liable for the default of connecting and terminal carriers, under section 6058, Rev. St. 1913, and cannot, in the event of such a contract, limit its liability as a carrier to its own line.—Ibid.

Though such statute fixes a liability on the initial carrier for the default of another carrier, and gives no express right of reimbursement to the initial carrier, the initial carrier has the right of reimbursement from the connecting carrier under the general principle of subrogation, and the statute cannot be said on that objection to be unconstitutional, as depriving the

initial carrier of its property without due process of law, nor is the statute unconstitutional as denying such carrier the equal protection of the law.—Ibid.

**Trial:**

An instruction that "The burden of proof is upon anyone * * * to establish * * * such several allegations as he asserts that are material to such one's success," is improper and misleading, but held not reversible error in this case, since other instructions definitely cover the subject.—Ibid.

In passing on the credibility of witnesses, the jury are not required to lay aside their general knowledge which comes from the common experience of mankind, and an instruction to that effect is not improper.—Ibid.

**Costs:**

Section 6063, Rev. St. 1913, making provision for attorneys' fees to plaintiff's attorneys, upon claims against a railroad, held to allow recovery in the nature of reimbursement of costs, and not unconstitutional as providing a penalty in favor of an individual.—Ibid.

An attorney's fee, to be reasonable, under such a statute, should be based upon a consideration of the value of the attorney's service to his client and the amount of time and labor expended by him, but should not bear an unfair proportion to the amount of the judgment recovered.—Ibid.

# Miscellaneous Decisions

### Traffic Cases Recently Decided by State and Federal Courts

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## REGULATION OF COMMON CARRIERS

**Interstate Commerce:**

The course by which a message was transmitted in the ordinary course of business by a telegraph company between two points within the state determines its character as an interstate or intrastate transaction, and it is interstate where it actually was sent through a portion of another state, though it was not necessary to send it across the state boundaries.—Western Union Telegraph Co. vs. Speight, 41 Supreme Court Rept. 11.

**Burden of Proof:**

If the motive of a telegraph company in transmitting a message between two points in the same state by way of points outside the state is material, the burden is on plaintiff, seeking to recover as for an intrastate message, to prove that the company's practice was for the purpose of evading the jurisdiction of the state.—Ibid.

**Freight—Liability of Consignor:**

(Supreme Court of New Hampshire:) A bill of lading, which stated that the owner or consignee shall pay the freight, and designated the consignor as owner of the goods, does not give notice to the carrier that the consignee alone is to pay the freight.—New York, N. H. & H. R. R. vs. Tonella, 111 Atl. Rept. 341.

Shipper or consignor is liable for the freight, in the absence of evidence of contrary intention, whether he is the owner of the goods shipped or not.—Ibid.

A mistake in stating and collecting the freight on an interstate shipment, the rates for which were presumably on file as required by law, does not prevent the carrier from thereafter collecting the correct amount, since an omission by mistake to charge the full rate is an evasion of the statute as much as an intentional undercharge.—Ibid.

The fact that the carrier delivered the goods to the consignee on payment of the freight demanded, which, by mistake was less than the amount due, and that the consignee had since become bankrupt, so that the consignor could not recover the freight from him, does not estop the carrier from collecting the freight from the consignor.—Ibid.

**Acceptance—Not Notice of Ownership:**

The fact that the consignee accepted the goods shipped and paid the freight demanded thereon does not give the carrier notice that he was owner of the goods, so as to preclude the carrier from recovering from the consignor the portion of the freight omitted by mistake.—Ibid.

**Mistake in Weight:**

A mistake as to the weight of a shipment on which the freight is computed has the same effect as a mistake in the rate.—Ibid.

**Discrimination:**

(Supreme Court, Special Term for Motions, Kings County.) Common carriers have an affirmative duty to perform impartial service, and cannot lawfully discriminate against and subject a shipper to undue prejudice.—Burgess Bros. Co., Inc., vs. Stewart et al., 184 N. Y. Supp. 200.

**Increased Rates:**

(Supreme Court of North Dakota.) The Board of Railroad Commissioners, pursuant to an application by the carriers, conducted a hearing attended throughout by one member of the board and a part of the time by two members. Several days thereafter a meeting of the board was held, at which the subject-matter of the application was discussed, but concerning which there was no vote taken on any matter presented in the application, although it is claimed an agreement as to disposition was reached. The minutes of the board do not show what action, if any, was taken. Subsequently an order was issued, under the seal of the board and signed by the secretary, disposing of the application, the secretary stating that such order was released pursuant to an understanding with one member of the board. It is held: (1) The purported order is void for the lack of proper action by the Board of Railroad Commissioners, and the carriers are restrained from putting into effect rate increases based upon the purported order, and are required to refund increased charges which have been collected pursuant to such purported order.—State ex rel. Wm. Lemke, Asst. Atty.-Gen., vs. Chicago & N. W. Ry. Co. et al., 179 N. W. Rept. 378.

The Board of Railroad Commissioners possesses only the authority conferred upon it by the Constitution and the statutes, Laws 1919, c. 192, 34, 35, 42, 43; Laws 1919, c. 194, and Com. Laws 1913, 4731, 4741, and its action as to any subject-matter within its jurisdiction, to be valid, must be in substantial conformity with the governing statutes and consonant with due process of law.—Ibid.

Under Laws 1919, c. 194, 10, a member of the Board of Railroad Commissioners, who had attended the hearings on an application by carriers for a rate increase, could not properly yield his assent to its order increasing rates without having heard or read the evidence, nor does anything in Transportation Act Con., Feb. 28, 1920, justify such consideration, in view of Laws 1919, c. 192, 35, 43, relating to the effect of the board's record as evidence.—Ibid.

**Liability of Telegraph Company Under Federal Control:**

(Supreme Court of Kansas.) The Western Union Telegraph Company is not liable for damages caused by the failure to transmit money by telegram over the Western Union line during the time that the property of the company was under the control of the government of the United States under the joint resolution adopted by Congress July 16, 1918, and the proclamation of the President issued thereunder July 22, 1918 (U. S. Comp. St. Ann. Supp. 1919, 3115¾x), and the order of the Postmaster-General issued Aug. 1, 1918.—Dessery vs. Western Union Telegraph Co., 192 Pac. Rept. 728.

# Shipping Decisions

### Cases Recently Decided by State and Federal Courts

(Digests taken from Reporters and Digests of National Reporter System, Published by West Publishing Co., St. Paul, Minn. Copyright by West Publishing Co.)

**Negligence:**

(Circuit Court of Appeals, First Circuit.) Negligence of a canal company in permitting a vessel which was not fit to enter its canal, and which contributed to the first stranding of the vessel, is not the proximate cause of injury to the cargo, when the vessel sank after a second stranding, due to the negligence of the master in attempting to navigate the canal with his vessel down by the head from the first stranding, in which attempt the canal company did not concur.—White Oak Transp. Co. et al. vs. Boston, Cape Cod & New York Canal Co. et al., 267 Fed. Rept. 176.

**Collision:**

(Circuit Court of Appeals, Fourth Circuit.) A collision between a vessel which dragged her anchor in a severe windstorm, and another vessel, anchored a quarter of a mile distant, held due solely to the fault of the drifting vessel in neglecting to put out a second anchor until too near the other vessel to be of any avail, although the storm had been threatening for several hours. The Newa. The Djerissa. 267 Fed. ept. 115.

To avoid liability for a collision on the ground of inevitable accident, a vessel must show that she was without fault.—Ibid.

A vessel at anchor is not required to assume extraordinary risks to avoid the consequences of impending danger occasioned by the fault of another vessel.—Ibid.

Where an anchored vessel has been run into by another, which dragged her anchor, the burden rests upon the latter to show that she had a proper watch, and that she discovered the dragging as soon as it commenced, and took proper measures to stop it.—Ibid.

**Removal of Causes:**

(District Court, S. D., Mississippi, S. D.) A suit involving less than $3,000 is not removable on the ground, alleged in the petition for removal, that the inability sought to be enforced was incurred by defendant as agent for the United States.—

Ingram Day Lumber Co. vs. United States Shipping Board Emergency Fleet Corporation., 267 Fed. Rept. 283.

**Jurisdiction of Federal Court:**

Shipping Board act Sept. 7, 1916 (Comp. St. 8146a, et seq.), is a law regulating commerce, and under Judicial Code 24, par. 8 (Comp. St. 991), a suit against the United States Shipping Board Emergency Fleet Corporation, created under section 11 of said act (Comp. St. 8146f), is cognizable in a federal court, regardless of the amount in controversy.—Ibid.

**Emergency Fleet Corporation Subject to Suit:**

The United States Shipping Board Emergency Fleet Corporation is by law of the District of Columbia, under which it is organized, made subject generally to civil suits, and, whether in the transaction out of which a suit arose it was acting solely as a governmental agency and is therefore under the law exempt from personal liability, is a question of fact to be determined on the proofs.—Ibid.

That the United States is a stockholder in the United States Shipping Board Emergency Fleet Corporation does not render a suit against it to enforce a contract made by it a suit against the United States.—Ibid.

**Salvage:**

(Circuit Court of Appeals, Fourth Circuit.) Where salvors sent a tug, which with its tackle was worth about $175,000, to aid a grounded vessel worth $500,000 and the salvors laid wrecking anchors, passing lines to the vessel, so that it was able by its own machinery to be floated, and after being towed a short distance proceeded under its own power, held that an award of $12,000 was not, under the circumstances, inadequate.—The Bretanier, 267 Fed. Rept. 178.

**Evidence:**

(Circuit Court of Appeals, Second Circuit.) Evidence in proceeding to limit liability for loss of a vessel with cargo and baggage, which showed that the vessel was abandoned after a quantity of water far greater than the contents of the boilers had entered the engine room during a storm, when the engines were stopped, held to show that the water entered from outside, not from the boilers, so that the loss was not due to unseaworthiness of the boilers. The Thessaloniki. Appeal of National Steam Navigation Co., Ltd., of Greece. 267 Fed. Rept. 67.

In proceeding to limit liability, evidence of inspections of the vessel and her rating and condition held to show that she was seaworthy when she started on her last voyage, and that her loss was caused by perils of the sea.—Ibid.

**Abandonment:**

The abandonment of a vessel by her master and crew, when the vessel is not yet past saving, is an error of navigation and management, for which the owners can limit their liability, under the Harter act (Comp. St. 8029, 8035).—Ibid.

**Liability of Steamship:**

A steamship company is not an insurer as to passengers on the vessel, but only liable for "ordinary care;" that is, care according to the circumstances, which, in case of stormy and dangerous weather conditions, is a very high decree of care.—Ibid.

A steamship company is an insurer as to the cargo and the passenger's baggage, unless the loss was brought within an exception of the bill of lading or passenger ticket.—Ibid.

**Burden of Proof:**

In proceeding to limit liability, the burden is on the passenger or consignee to prove negligence by the steamship company as the cause of loss of baggage or cargo.—Ibid.

## CAR SURPLUS AND SHORTAGE

The American Railway Association has issued the following under date of November 20:

"From information compiled by the car service division a summary of car surplusages and deferred car requisitions indicating an average for the period November 1 to November 8, inclusive, is presented herewith, with comparisons:

TOTAL SURPLUSAGES

| | |
|---|---|
| Average for period, November 1 to November 8, 1920 | 12,033 |
| Average for period October 1 to October 7, 1920 | 1,928 |

"It will be noted that there is an increase of 10,105 cars in the total average over the period October 1 to October 7, 1920.

TOTAL DEFERRED CAR REQUISITIONS.

| | |
|---|---|
| Average for period, November 1 to November 8, 1920 | 39,688 |
| Average for period, October 1 to October 7, 1920 | 75,336 |

"The total deferred car requisitions show a decrease of 35,648 cars over the period October 1 to October 7, 1920.

"The average figures by classes of cars for the period November 1 to November 8, are as follows:

| Classes. | Surplusages | Deferred car requisitions |
|---|---|---|
| Box | 7,532 | 12,651 |
| Flat | 64 | 5,244 |
| Gondola | 1,781 | 18,156 |
| Miscellaneous | 2,656 | 3,637 |
| Total | 12,033 | 39,688 |

# Questions and Answers

In this department will be answered questions of both legal and practical nature that confront persons dealing with traffic. A specialist on interstate commerce law, who is a member of our legal department, will give his opinion in answer to any simple question relating to the law of interstate transportation of freight. A traffic man of long experience and wide knowledge will answer questions relating to practical traffic problems. We do not desire to take the place of the traffic man but to help him in his work. Persons desiring immediate answer by mail or wire or a more elaborate treatment of any question—by the citation of authorities in a legal opinion, for instance—may obtain this kind of private service by the payment of a reasonable fee. The right is reserved to refuse to answer in this department any question, legal or traffic, that it may appear to us unwise to answer or that involves a situation too complex for the kind of investigation herein contemplated.

Address Questions and Answers Department,
**Traffic Service Corporation,** Colorado Building, Washington, D. C.

### Damages to Perishable Goods Awaiting Shipment

**Massachusetts.**—Question: Kindly advise me your opinion of the merits of the following claims:

Shipment 3 cartons, cordials, in glass, shipped via the N. Y. N. H. & H. Railway, Worcester, Mass., to Willimantic, Conn.; the N. H. Railway issued a shipping day guide, stating shipments for Willimantic would be accepted for transportation only on Wednesday and Saturday of each week. Shipment trucked to freight house, accepted by the railway and bill of lading signed without exceptions on Monday, December 15, 1919. Waybilled December 17, Wednesday, and delivered to consignee December 19, in frozen condition.

The carrier, in declining the claim, contended that "delay at Worcester, while not made part of the bill of lading contract, was fully contemplated by the shippers when the shipment was offered for transportation. That damage is due to inherent vice of the shipment rather than to negligent or irregular handling upon the part of the carrier."

My contention is that the carrier could have refused to accept the shipment, with its attendant risks and responsibilities, on a Monday, but, since they accepted it, they became responsible for it. That, since they were aware of the contents, that ordinary care would have dictated that the shipment be placed where it would have been protected from freezing.

Answer: The law is well established that any carrier who for hire holds itself out to carry a certain kind of traffic is under obligation to furnish equipment necessary and suitable to transport it in safety, especially so, when such traffic moves regularly in sufficient volume to justify it. Consequently, if the carrier receives a shipment of perishable goods for immediate shipment it must exercise care in view of the fact that the goods are perishable, and, though it is not liable for loss caused by the inherent nature of the goods, it is liable for damage from a delay in transporting goods if proper protection is not given the property in the meantime. As to the shipment in question, the carrier, by accepting the shipment on Monday for transportation the following Wednesday, became liable for its proper protection and should have provided proper storage pending the time when it could be shipped, or, in the event it could not offer proper storage protection, it should have refused to accept the shipment for transportation until the time when it could have forwarded it with safety. In the case of Burroughs vs. Grand Trunk Railway Co., 67 Mich. 351, the court decided that it is the duty of the carrier to protect perishable property held in their warehouse.

### Sale of Unclaimed Merchandise

**Ohio.**—Question: We will appreciate it if you will advise under what authority the express company is allowed to sell unclaimed merchandise. We have been unable to locate anything in the existing express classifications authorizinng the sale of unclaimed shipments, and if you can quote any regulations which specifically provide a time limit beyond that which express company is permitted to dispose of such merchandise we will appreciate that information. Also, kindly advise if they are entitled to any storage charges, or if, in connection with such shipments, they are entitled only to express charges for transportation between point of origin and destination.

Answer: The authority of express companies to sell unclaimed merchandise and the provisions governing such sales are to be found in the statutes of the state in which delivery of the shipment is made. In order that the carrier may absolve itself from liability it is necessary for such carrier to comply strictly with the provisions of such statutes.

In addition to the express charges, storage charges may be deducted from the proceeds of the sale of the goods by the express company. See C. R. R. of N. J. vs. Berry, 165 N. Y. S. 1041; also Jelks vs. P. & R. R. Co., 80 S. E. 216.

### Notice of Arrival—Mailing Constitutes

**New York.**—Question: We are in receipt of a telephone call from a clerk at Pier 10, North River, Central Railroad of New Jersey, informing us that there is a shipment on the dock consigned to us and waiting for us to pick it up. This clerk claims that he personally sent us a notice on the twelfth inst.

and the time is up November fifteenth, but the notice was not received at this office, and this is the first we have heard of it. He also claims that we are two days overdue and will have to pay a storage charge; also if the goods are not taken from the pier before November 18, 5 p. m., the goods will be placed in the warehouse. He insists that it is not up to the railroad if we did not receive the arrival notice, as they can show records that it was sent out on the twelfth, and that we will have to pay for these two days.

Answer: In several cases the Commission has held that the carrier's duty is performed when it places notice in the mail and that demurrage and storage charges are properly assessed even though such notice is not received by the consignee. See Ohio Iron & Metal Co. vs. E. J. & E., 34 I. C. C. 75.

### Liability of Carrier for Goods Stored on Instructions of Party to Be Notified Under Bill of Lading

**Nebraska.**—Question: We have been forwarding shipments of flour to various points through the east, Pennsylvania and Ohio, billed to our order, notify a certain party at 16th Street stores or 23d Street stores, and these cars are being stored upon arrival by the carrier without surrender of the shipper's order bill of lading, the carrier failing to notify us of their action, or their intention of storing the shipment.

It appears, at times, the consignee orders the carrier to store these cars and they follow his instructions without taking up the shipper's order bill of lading, and we have a few cases of this kind that have caused us heavy loss.

Will you please advise what authority the carriers have to store shipments of this kind by order of the consignee without taking up the shipper's order bill of lading or conferring with us? On the other hand, should a shipper's order shipment be refused by consignee and carriers store shipment without notifying us, what recourse have we against the carrier for loss and damage in both instances? Please refer to court rulings covering and explain fully.

Answer: Inasmuch as the carrier, in storing the goods is acting under instruction from the party to be notified under the bill of lading, we are of the opinion that the carrier is under no obligation to advise the consignor of the storage of the shipment. The freight is neither refused nor unclaimed and the carrier may, we believe, rightfully assume that the shipment will be accepted by the party to be notified or other disposition made of it, either by the party to be notified or by the consignor.

There is no duty imposed under the storage tariffs to notify consignors of refused or unclaimed carload shipments, although there is such a provision in the demurrage tariffs. Section E-1 of rule 4 providing that when carload freight is refused at destination notice of such refusal shall, within 24 hours thereafter, be sent by wire to consignor, when known, at his expense, or, when not known, to agent at point of shipment, who shall be required promptly to notify the shipper, if known. While paragraph 2-B of section 3 of this rule provides that when carload freight (other than perishable freight) is unclaimed within five days from the first 7 a. m. after the date on which notice of arrival has been sent or given to the consignee, a notice to that effect shall be sent by wire, as provided in paragraph 1 of this section.

The courts have generally ruled that carriers are required to give consignor notice of unclaimed or refused shipments. See Michigan Central R. Co. vs. Harville, 136 Ill. App. 243; Sterling Button Co. vs. Barrett, 171 N. Y. S. 326, and Stoddard Lumber Co. vs. O. W. R. & N. Co., 165 Pac. 363. It therefore appears that provisions similar to those carried in the demurrage tariffs with reference to notice to the consignor of refused or unclaimed shipments should be incorporated in the uniform storage rules.

### Measure of Damage for Conversion of Coke

**Ohio.**—Question: Prior to August 26, at which time the freight rates were increased 40 per cent, we purchased a car of limestone, which was shipped before the increased freight rate was effective. The hoppers of this car came down while in transit and the entire contents were lost.

In making claim against the railroad company for the value of this car we are of the opinion that we are entitled to include in our claim the excess freight which we will be obliged to pay in securing another car to replace the one lost, as such replacement was made after August 26, therefore taking the increased freight rate. Are we correct in our opinion?

One of a number of cars which were shipped to us prior to August 26 was delivered to another company in error. At the time we discovered this the price of coke, which the car contained, had increased $1 per ton. In addition to this the freight rate from the point of shipment had increased 40 per cent. In this particular case the company unloading this car evidently did so without proper shipping notice, assuming that the car belonged to them on account of it having been placed in their yards by the railroad company. Can we collect the replacement value of this coke from the company using it, or should we file claim against the railroad company for this replacement value?

Answer: The measure of damages for the conversion by a carrier of goods intrusted to it for transportation is the value of the goods at the time and place of conversion, namely, the destination of the shipment. From this amount, in accordance with numerous decisions, the freight charges are to be deducted, for the reason that, while the shipper is not bound to pay freight where the carrier fails to perform his obligation to deliver in good condition, yet he should not have the advantage of the increased value of the goods, due to free transportation, that is, the shipper is entitled to the net value at the place of destination. If the freight charges have been paid, the value of the property without reference to such charges is the basis of recovery.

The value of the goods at destination is the reasonable market value, such value being the price which could be obtained in the open market for bulk quantities. We know of no decisions to the effect that the carrier must pay damages on the basis of the advanced price of the duplicate shipment for the the loss or conversion of the original shipment and the amount of damage for which a carrier would be held liable in a suit for conversion of a car of coal would not include the difference between the value of the shipment converted and what must be paid at a later date for a shipment to replace the one converted, the measure of damages being the market value of the shipment at destination at the time of conversion.

### Erroneous Declaration of Express Valuation

**Georgia.**—Question: Several months ago we made shipment via American Railway Express Company to a point in North Carolina, the value of the shipment being $80. However, through a typographical error, the valuation on express receipt was shown as $8.

The shipment in question was lost and we have entered claim for the loss to the extent of $80, which is the actual value. The express company have noted the value of $8 shown on receipt and will not settle on any other basis. Is it not true that their express receipt is subject to correction, same as a railroad bill of lading?

Answer: The Cummins amendment permits a carrier to limit its liability covering property upon which the Interstate Commerce Commission has authorized or required the carrier to establish and maintain rates dependent upon the value declared in writing by the shipper or agreed upon in writing as the released value of the property, and In the Matter of Express Receipts, 43 I. C. C. 510, the Commission has authorized the form and terms and conditions of the uniform express receipt, which contains a provision to the effect that in consideration of the rate charged the shipper agrees that the company shall not be liable for more than $50 for any shipment of 100 pounds or less, or for more than 50 cents per pound for any shipment weighing more than 100 pounds, unless a greater value is declared or charges for such greater value paid.

Inasmuch as the express receipt constitutes the contract of shipment, parole evidence is not permissible in the absence of fraud or mistake to vary this provision or to show that the contract was different from that shown by the instrument, and the shipper cannot allege fraud or mistake in an express receipt prepared by himself. As the express charges are based upon the valuation shown in the express receipt, the shipper cannot, after a shipment has moved, in case of loss or damage, claim that the valuation was greater than that shown in the receipt, for to do so in any case would be the means of defeating the purpose of the provisions of the Express Classification with respect to varying charges dependent upon the declared or released value of the property, which provisions have been held to be reasonable limitations of liability by the courts. If, therefore, the declaration was made in the express receipt that the value of the entire shipment was $8, and the express company charged the rate dependent upon that value, such declaration is binding.

### Reconsignment—No Liability if Carrier Follows Shipper's Instructions

**Missouri.**—Question: We shipped from Renton, Wash., on September 4, M. St. P. & S. S. M. car 106992, consigned to ourselves at Minneapolis, Minn. Under date of September 19 we filed reconsigning instructions with agent of the Northern Pacific Railroad at St. Paul, Minn., advising him in our letter that car was consigned to ourselves at Minnesota Transfer, but we attached bill of lading which showed very clearly that car was billed to Minneapolis. Now instead of this agent forwarding our instructions to Minneapolis, to be executed, he held them at Minnesota Transfer, in the meantime car arrived at Minneapolis and demurrage accrued.

We admit that we stated in our letter that car was consigned to us at Minnesota Transfer, but the Bill of Lading attached to our letter, clearly contradicted our statement and showed clearly that car was billed to Minneapolis. If the carrier would have exercised ordinary diligence he would have forwarded our instructions to point named to bill of lading, the document governing matters of reconsigning, or would have returned the instructions to us instead of holding them, when as a matter of

fact they could not have been executed at Minnesota Transfer, the point where same was held. Who was negligent. Can we recover the demurrage that accrued?

Answer: Assuming that the carrier, upon arrival of the car at Minneapolis, Minn., mailed notice of arrival in accordance with the provisions of the demurrage tariff, we are of the opinion that the carrier was not negligent in holding the car at that point awaiting disposition instructions, inasmuch as your reconsigning instructions specified Minnesota Transfer as the destination of the shipment, and this even though bill of lading was enclosed, for the reason that an examination of the bill of lading was not essential to the reconsignment of the car.

**Variance in Gallonage Due to Expansion and Contraction of Oil**

Michigan.—Question: Rule No. 35, Section 2 of Consolidated Freight Classification No. 1, reads in part as follows:

The shell gallonage capacity of tank cars as referred to in this rule does not include the capacity of the dome; if the lading extends into the dome, computed weight of the quantity in the dome must be added by the shipper to the weight computed from the shell gallonage capacity and the total weight of the load thus computed must be given by the shipper.

According to the above rule it is permissible for carriers to charge for petroleum oils when loaded in dome of tank car as a high temperature. As an example, if fuel or refined oil was loaded at temperature 130 degrees F. with shell full and also a quantity in the dome, would railroad company be right in charging for such shipment on the estimated weight per gallon of the contents in the dome as well as shell of the car at that temperature, when if oil was cooled down to temperature sixty degrees F the car would only be shell full. In the oil business the temperature 60 degrees F. is taken as normal based on the standard of water at 60 degrees. Furthermore, the actual weight of given quantity of oil does not change with temperature, it is true that the volume contracts as the temperature is lowered and expands as the temperature is increased, but the actual weight of tank car loaded to shell full at 60 degrees would be the same as the actual weight of tank car where oil was loaded into dome as well as the shell at temperature 130 degrees.

It would appear that in Rule 35 of the Consolidated Classification this feature is not covered and we would like to have your opinion regarding the proper basis which carriers could charge on such shipments.

Answer: Under the present tariff provisions charges must be paid upon the contents of a tank car at the time the gallonage capacity is ascertained, inasmuch as no provision is made for an allowance to cover the difference in the gallonage at different times by reason of the expansion of the oil as the temperature is increased.

In order to cover the situation a table of allowances should be provided for by tariff authority to take care of the variance in the gallonage due to the expansion and contraction of the lading.

**Tax on Export Shipment Reconsigned in Transit**

Kansas.—Question: We wish that your legal department would advise us as to whether or not the war tax on inbound freight to a reconsigning point is not chargeable when the shipment is reconsigned to export and temporary exemption certificates are filed with the originating carrier and copies forwarded to the agent of the delivering carrier at destination. For example, a shipment originating at Dodge City, Kansas, billed to Wichita, Kansas, and diverted after arrival at Wichita, Kansas, via the originating line Rock Island to New Orleans, La., for export, on the through export rate Dodge City to New Orleans, and temporary exemption certificate filed with Diversion Agent at Wichita, copy sent to the New Orleans Agent of the N. O. T. & M. Railway delivering line and then in due time freight paid, less war tax, as the case may be Dodge City to New Orleans, or Wichita to New Orleans. What we wish to know is whether or not the war tax should be charged up to Wichita in case the shipment arrived before diversion.

Will you also please consider this same example except that diversion to be accomplished at Wichita, Kansas, prior to the arrival of the shipment at Wichita, Kansas?

Answer: Article 16 of Regulations No. 49 (Revised) of the Treasury Department provides that property in the course of exportation is exempt from tax. In paragraph (c) of this article, however, it is provided that the movement must be continuous; that there must be no "break" in the movement; that the property must not "come to rest;" and if there is break or a coming to rest of the property at any point in transit, the first movement is a complete domestic movement and amounts paid for the transportation on the first movement are taxable and are not subject to exemption or refund other than as provided in Article 14 thereof.

Paragraph (c) further provides that a "break" occurs or "property comes to rest" when a shipment moving in commerce, although it may consist of articles or products manufactured or produced for export and which the shipper, producer or manufacturer intends for export, reaches a place in the United States where at the instance of the shipper or agent, it is stopped for a business purpose such as private sale, storage, grading, sacking, reconsignment or manufacture, and not a necessary delay or accommodation to the means of transportation.

In Article 18 it is provided:

In the case of freight originating in the United States and consigned to a destination in the United States which is subsequently diverted or reconsigned to a point in Canada or Mexico, the carrier so diverting or reconsigning it shall collect the transportation tax on the charges from such point of origin in the United States to the point at which the diversion to Canada or Mexico occurred at the time such diversion or reconsignment is made. From the last point of diversion in the United States charges for the transportation of property to Canada or Mexico will be exempt from the tax without the filing of a temporary exemption certificate or certificate of exportation, provided the shipper retains in his files proof of the export character of the shipment from the point at which such diversion occurred.

In view of the provisions of Regulations 49 referred to above, it is our opinion that war tax should be assessed on the movement to Wichita, Kansas, regardless of whether the diversion instructions are placed prior to or after the arrival of the shipment at that point, inasmuch as a reconsignment is not a necessary delay or accommodation to the means of transportation, but constitutes a break in the movement from origin to port of export.

**Refunds on Shipments Where No Certificates Are Filed**

Kansas.—Question: We have been recently advised that the Internal Revenue Commissioner of the United States Treasury has issued, or is about to issue, a decision that war tax collected in error at ports of exportation may be refunded by the collecting lines to the parties paying same and the amount deducted from their next returns of war tax collected to the Internal Revenue Department of the Treasury.

We have at this time several thousand dollars paid in war tax in error through failure of our export agent at New Orleans and will very much appreciate your filing our request for information on this particular subject and advising us at this time if such decision has been made, or is contemplated, and in the future if such action is taken, advising us promptly.

Answer: Article 30 of Regulations 49 (Revised) of the Treasury Department, Internal Revenue Division reads:

Shipments originating on and after October 10, 1919, where no certificates are filed.—On and after October 10, 1919, in all cases where the movement of the property has been continuous from the point of origin to the point of exportation and in due course actually exported, and no stoppage in transit occurred except in necessary delay or accommodation to the means of transportation, and such shipments have not been covered with the necessary temporary exemption certificates, the carrier shall collect the tax and the party paying the freight charges may file a claim with the Commissioner of Internal Revenue on Form 46 for refund of the tax collected.

In Article 31 it is provided that the procedure in the presentation of claims for the refund of taxes paid on bona fide export shipments as prescribed in Articles 119 to 122 inclusive is to be followed.

Article 119 provides that claims for refund of the taxes which may have been erroneously or illegally collected must be made by the person who actually paid the tax to the transportation company and that such claims for refund should be prepared on Treasury Department Form 46 and filed with the Commissioner of Internal Revenue.

Article 120 specifies what evidence is required to support claims for refund.

The instructions contained in the above referred to articles of Regulations No. 49 (Revised) are the latest issued by the Treasury Department.

**Through Charges on Cane Seed Accorded Transit**

Missouri.—Question: We shipped a car of cane seed on February 7th, 1917, to Howe, Texas, from Kansas City, Mo. Bill of lading was issued via St. L.-S. F. R. R. This seed was cleaned in transit at Kansas City, Mo., and inbound tonnage surrendered which originated at Satanta, Kansas, on the T. & S. F. R. R. Through oversight we paid the St. L.-S. F. on basis of the proportional rate from Kansas City, Mo., to Howe, Texas, while the balance of the through rate transit rate Satanta, Kansas, to Howe, Texas, is less than the proportional rate.

We filed claim with the St. L. -S. F. R. R. for the overcharge. The St. L.-S. F. decline payment, contending that there was a proportional rate inserted on bill of lading; also that the route via H. & T. C. R. R. at Sherman, Texas, was inserted on the original bill of lading, and that the St. L.-S. F. collected freight charges on the basis of the proportional rate, as shown on bill of lading.

For the above reasons, the St. L-S. F. decline to honor refund to basis of the lesser rate, which is the balance of a through transit rate. It is our argument that in the event a lower than tariff rate had been inserted on bill of lading, we would have been liable for the correct rate, although higher, and that the rule should apply both ways.

Answer: An examination of Southwestern Lines Tariff 32-Q, F. H. Leland's I. C. C. No. 1151, which was in effect at the time your shipment moved, reveals the fact that joint through rates on cane seed from Satanta, Kansas, to Howe, Texas, applied only via the A. T. & S. F., G. C. & S. F., Dallas, Texas and H. & T. C., and the St. L.-S. F. R. R. could not assess charges on the basis of the through joint rate from point of origin to ultimate destination, due to the fact that the joint through rate does not apply in connection with the St. L.-S. F. Charges should therefore be assessed on basis of the Kansas City, Mo., combination.

## PROTEST RECONSIGNMENT RULES

*The Traffic World Washington Bureau*

Protests going to the merits of the reconsignment and diversion rules contained in tariffs, chief of which are two by Fairbanks, filed to become effective December 1, were made November 23 by representatives of shippers who asked for suspension. Technically, the protests were directed at the tariffs on the ground that they were not in conformity with the conditions and spirit of the Commission's decision in the reconsignment case. As a matter of fact much of the testimony, especially of the Florida, Tennessee and Mississippi shippers, who were heard at the morning session, went to the merits of the whole matter. The Florida people, in particular, contended that the effect of the rules would be disastrous to them, to the railroads, and to the public because they would tend to destroy the tonnage which the rail carriers, in competition with the carriers by water, had built up since their advent in south Florida in 1887.

J. C. Chase, of Chase & Co.; J. F. Thomas, of Sawyer-Thomas Company, and E. D. Dow, of the Florida Citrus Fruit Exchange, said the effect would be an immediate diminution in the acreage of vegetables and the gradual decline of the citrus fruit groves because the expense of doing business would be so increased that the consuming public could not afford to buy the products moving to market from the fields at a long distance from the markets.

The tariffs permit one free reconsignment of fruits and vegetables, if the order is given within twenty-four hours after arrival at the first billed destination, which, in the case of Florida traffic, is Waycross, Ga.; and in the case of Mississippi traffic, Mounds, Ill.; and in the case of some of the Tennessee traffic, Cincinnati. Mr. Thomas objected to the charge of $2, notwithstanding the fact that the Commission, in many cases, said that a reasonable charge might and should be made for that service.

Mr. Dow contended that the Florida shippers had not been heard in the case, the decision in which is being used as a foundation for the tariffs under attack. He said that if any witness had claimed to speak for the Florida interests he had assumed authority that had not been granted. Mr. Thomas asked for suspension on the ground that, even if the protestants were heard, conditions had changed so as to warrant a suspension and a consideration of the matter in a "clear-cut, business-like way."

The testimony of Mr. Chase consisted of a description of the method of handling Florida fruits and vegetables. Answering questions by C. E. Bell, C. R. Marshall and D. A. DeVane, he said the effect of the tariffs, if allowed to become operative, would be to require the grower of citrus fruit either to hold his fruit on the trees until he found a market for them, or in the cars until that condition had been met.

"If these tariffs become effective, the shipper will have to take the full count on free time at every point," said Mr. Chase. "He will need it to enable him to find the market to which his stuff is to go before the car is delivered to the carrier. I have a grove from which 200 cars are shipped annually. The practice now is for the two trains, one each way each day, to take the cars that may be loaded. The southbound train takes it to the point to the south where the sidetrack joins the main track, and the northbound train takes the loaded car or cars to the junction point on the north, regardless of whether or not there is a market for the fruit shown on the billing. If the new rules are allowed to go into effect, the cars will have to be held on that track until we can find out what market will take that particular car. We can't tell in Jacksonville, until we get the manifest, what the car contains, and until we know that we cannot say what market needs it. Holding a car on a sidetrack one day causes more deterioration than three days of 'rolling,' even on a slow schedule."

From eighteen to twenty thousand cars are produced by the shippers represented by him, Mr. Thomas said. The Department of Agriculture, he said, was always calling on the fruit and vegetable grower to produce more. The railroads and the Commission, he said, if these tariffs were allowed to become operative, would be working to cut production down. He said that if the Commission did not suspend, the growers would continue their fight, but they would not do it with as good grace as they would if the rules and rates were suspended, pending a more complete investigation.

At the afternoon session the witnesses were Edward Smith, for the American Fruit and Vegetable Shippers' Association; Henry E. Cole, for the California Citrus League; P. W. Coyle, for the St. Louis Chamber of Commerce; William H. Baggs, Chester Franzell, J. C. Folger and George Lafbury, for the National League of Commission Merchants, International Apple Shippers' Association, and the Western Fruit Jobbers' Association. The three fruit and vegetable associations joined their interests under the direction of Fayette B. Dow and R. S. French, so there would be no duplication. Messrs. Baggs, Franzell and Lafbury devoted themselves entirely to the situation in Pittsburgh, where the railroads have no hold yards but use one yard for both inspection and delivery. The men representing that market wanted to know whether the back haul privilege would be used to hurt them because it was impossible to avoid what might be called back hauls inasmuch as the tracks used necessitated the bringing of the traffic into the city.

Mr. Coyle made suggestions with regard to order and order notify shipments suggesting that the carriers should make arrangements with the owners of private tracks to have them regarded as company tracks and thereby avoid the harshness of the rule regarding surrender of the bill of lading on such shipments or the giving of an indemnity bonds as condition precedent to setting a car on a private track.

Seth Mann acted as both witness and attorney for the San Francisco Chamber of Commerce, as the latter acting on behalf of shippers of potatoes and onions. They claim in their protest that the new rules and rates will have the effect of reducing production in California, because, under the rules, the shipper will run too great a risk of loss for him to assume. The rules, they say, will afford an opportunity to unscrupulous dealers, at destination, to bid for shipments, knowing that the consignor has exhausted his quota of reconsignments and must either sell at the prices they are willing to offer, or pay the combination of locals, which, in the case of California vegetables, would be prohibitive.

In closing the hearing, J. C. Kerr, assistant general freight agent for the Louisville & Nashville, said it was announced to give the protestants an opportunity to bring forward new or additional facts. None, he said, had been brought forward and, therefore, it was unfair for the shippers to ask the Commission to suspend the tariffs. Practically every fact and argument used, he said, was used at the hearings in 1918 and disposed of in the report on the matter made by the Commission.

## ORDER NO. 21 VACATED

*The Traffic World Washington Bureau*

The Commission, November 24, vacated and set aside, as of midnight, November 24 its Service Order No. 21, issued on October 8, on the ground that the emergency which caused its promulgation has been "measurably relieved."

Service Order No. 21 is the one authorizing priority in the supply and movement of coal cars carrying coal for public utility and public institutions on special permits from the Commission. It was issued as a substitute for Service Order No. 16. The latter order gave priority for public utility companies and public institutions, on certificate from the delivering carrier. It was set aside, Commissioners Clark and Aitchison have said, because it was being abused, through the complaisance of officials of utility companies and public officers who invoked priority in the name of the companies or public institutions and then allowed the coal so obtained to be stored or distributed among employes of the companies or institutions.

During the life of No. 21 few applications for permits were filed with the Commission. One of the few was that of the Laclede Gas Company of St. Louis asking for a priority order for twenty cars, directed to the Louisville & Nashville, denied by the Commission on November 23, the day before Service Order No. 21 was vacated. It was denied because the investigation of Commissioners Aitchison and Potter convinced them that the Laclede company could obtain coal from other points of origin and that such an order to the Louisville & Nashville could be obeyed only at the expense of some of the large number of other public utility companies obtaining coal from the part of the L. & N. system from which the St. Louis company desired to obtain its supply, in part at least.

## N. Y. N. H. & H. BONDS

*The Traffic World Washington Bureau*

The New York, New Haven and Hartford Railroad Company has been authorized by an order of the Commission in Finance Docket No. 1063 to issue and pledge not to exceed $95,000,000 of first and refunding mortgage gold bonds.

The issue will be divided into two parts, $80,000,000 of Series A bonds, to be dated November 1, 1920, and to mature October 31, 1930, and $15,000,000 of Series B bonds to be dated November 1, 1920, and to mature, October 31, 1935. Both issues will bear 6 per cent interest per annum.

The Series A bonds will be used under the provisions of the order to secure the company's note or notes to be issued under Section 207 of the transportation act for the purpose of funding the company's indebtedness to the government incurred during the period of federal control and also for indebtedness incurred during federal control for additions and betterments made by the Director General of Railroads. The total of this indebtedness is approximately $60,000,000.

The issue of the Series B bonds, under the order, will be used as a pledge with the Secretary of the Treasury for security for loans from the United States under Section 210 of the transportation act. The company has applied for a loan of 8,130,000 from the government and the Series B bonds will be used as security for that loan.

# New Route Between San Diego and the East

The city and harbor of San Diego, Calif., have been considered of sufficient importance to warrant an expenditure of $18,000,000 to provide a direct transcontinental line between San Diego and the East by building the San Diego & Arizona Railway between San Diego and El Centro. It, in connection with the Southern Pacific and its eastern connections at El Paso and New Orleans, forms a new route for the transportation of passengers and freight.

Through Pullman service between San Diego and Chicago has effected a saving in distance of approximately 135 miles. It is the short line between the major portion of the population of the United States and San Diego.

The construction through Carriso Gorge involves some of the most expensive railway work that has ever been undertaken in America. This eleven-mile section contains seventeen tunnels, ranging from 180 feet to 2,650 feet in length. When passing through the tunnels, passengers are not bothered with fumes and smoke from the locomotives, because of the large bore of the tunnels, exceptionally light atmosphere, and a slight draft continually passing through Carriso Gorge.

Starting from San Diego, the line rises on almost a continuous grade for 85 miles to the summit, which is 3,660 feet above sea level. The maximum grade eastbound is 1.4 per cent, and it practically continues for 47 miles. Westbound, the line rises from an elevation of 49 feet below sea level at El Centro, with a maximum grade of 2.2 per cent for fifteen miles near the foot of the slope, and again for seven miles approaching the summit and with a 1.4 per cent grade for fifteen miles between.

This new scenic line affords a daylight trip across the Mexican border through Lower California, through Carriso Gorge and through the Imperial Valley, that remarkable land below sea level, as fertile as the Valley of the Nile.

The total irrigable area of Imperial Valley exceeds 800,000 acres, and much of the traffic originating there will move to San Diego for export to Asiatic and South American countries and for loading on seagoing vessels for shipment through the Panama Canal.

The landlocked harbor of San Diego, which is known as the "Harbor of Opportunity," is one of the natural harbors on the Pacific coast. The depth of water permits ships of the greatest draught to dock. It is the nearest harbor to the Panama Canal and can be entered by ships at any time any day of the year.

The city of San Diego has recently completed a municipal pier with 53,200 square feet of floor area and it is provided with all the latest facilities for the proper handling of cargoes. The city has now started work on a pier with a floor area of 400,000 square feet.

San Diego harbor is the southern home of the Pacific fleet and the government has spent in and around the harbor in the last few years more than $10,000,000, including the following improvements: Army and navy flying stations on North Island; a marine base, naval training station; naval repair station; harbor dredging—and all these improvements are being added to at this time. Construction has just been begun on a $1,000,000 naval hospital.

Scene in Carriso Gorge

The completion of the San Diego & Arizona Railway provides the second transcontinental railway from San Diego to the east and has put in full swing the industrial development of the harbor, of which the latest industry is the $2,000,000 San Diego Oil Products Corporation, the first unit for manufacturing cottonseed oil and similar products just being completed.

The harbor is provided with a water frontage at this time

of approximately nine miles, and additional dredging, together with possible dockage, would easily take care of all of the traffic of California.

The new line links closely together San Diego, with a population of 80,000, and Imperial Valley, with a population of 60,000.

## Personal Notes

The transportation study class of Swift & Co. has adopted the following resolutions with regard to the death of Frank Hill Frederick, leader of the class and assistant traffic manager of the company: "Whereas, Mr. Frederick has served Swift & Co. efficiently and faithfully during many years, and to us under his charge, his fairness and broadmindedness was his marked characteristic; and Whereas, his life was an exemplification of bigness of heart and true fraternoty with his fellows, Be it resolved, that we, members of the Swift & Co. Transportation Study Class, in regular session this sixteenth day of November, A. D. 1920, do hereby extend to his relatives, to Swift & Co. and to his many friends in and out of the business world, our sincere sympathy and genuine sorrow, in which we share, in the loss of this great man."

The New York Central reports the restoration of off-line traffic agencies in 17 cities.

T. H. Milligan is appointed soliciting freight agent of the Merchants & Miners Transportation Company at Baltimore.

C. B. Rader has recently been appointed secretary and traffic commissioner of the Denver Grain Exchange Association. Prior to going to Denver, Mr. Rader was connected with the operating department of the Louisville & Nashville at St. Louis and later with the Mobile & Ohio for six years, in charge of the compilation of tariffs and rate adjustments, in the traffic manager's office at St. Louis.

The New York Central Lines announce the following appointments of general agents, freight department: J. H. Love, Kansas City; A. W. Cassels, Seattle; H. R. Ballard, St. Paul; A. C. Huggins, New Orleans; M. A. Greding, Dallas; A. L. Evans, Minneapolis; T. C. Porteous, Los Angeles; W. F. Greaves, Birmingham; J. L. Carleton, Oklahoma City; R. J. Nicoud, Milwaukee; M. A. Huntley (westbound), Milwaukee; W. W. Dickinson, San Francisco; M. J. Sweet, Omaha; G. H. Johnston, Memphis; J. J. Ford, Denver.

The Fort Smith & Western Railroad announces that F. A. Bell is appointed general agent in charge of the company's affairs in transcontinental and north Pacific coast territories, with offices at San Francisco.

The San Antonio, Uvalde & Gulf Railroad announces that Jos. P. O'Donnell is appointed general agent, Dallas, Tex.

The Clyde Steamship Company and Mallory Steamship Company announce that, effective December 1, H. E. Maynard will return to the service of these companies, and resume his position as assistant freight traffic manager, with office at New York, N. Y.

The Wabash Railway Company announces that C. J. Helber is appointed general agent, with headquarters at Denver; G. W. Terry, traveling freight agent, Salt Lake City, is transferred to the same position at Denver.

The Union Tank Car Company announces that E. C. Sicardi, senior vice-president, in addition to the regular duties of his office, has general supervision of all of the various departments of this company. P. F. Finnegan, vice-president, has charge of the car service department, and all correspondence relative to the distribution and movement of cars should be addressed to him; A. E. Smith has been elected a vice-president, having charge of construction and maintenance of plant and equipment, and all correspondence regarding repairs to cars and M. C. B. matters should be addressed to him. The office of master car builder has been discontinued.

Erskine Wood, admiralty counsel of the United States Shipping Board, has submitted his resignation, effective November 30. Mr. Wood's home is in Portland, Ore., where he was engaged in the practice of law before he came to Washington. Chairman Benson said no successor to Mr. Wood had been appointed, and it was regarded as probable that the filling of the vacancy would be taken up by the new board.

## DOINGS OF THE TRAFFIC CLUBS

The Pittsburgh unit of the Traffic Group of the National Retail Dry Goods Association held its monthly meeting November 16. J. W. Johnson, city manager of the American Railway Express Company, discussed express service and packing rules. The committee on package cars made a report of its interview with railroad officials, who assured third-morning delivery on New York to Pittsburgh business.

The Transportation Club of Peoria announces a "Get Together" dinner, the evening of December 9, at 6:30 p. m., in Block & Kuhl's Cafe. The speakers will be Conrad E. Spens, vice-president, Chicago, Burlington & Quincy Railroad, and J. H. Beek, executive secretary, National Industrial Traffic League.

The Worcester Traffic Association held a meeting November 16 and made it a "Boston & Albany night" in line with its policy of getting together the railroad and industrial men on a common basis. Freight Traffic Manager VanUmmerson and General Freight Agent Allen were the railroad representatives present, but the operating officials were detained by a threatened storm, while the vice-president and general passenger agents were called away. There were about 85 members present. This is the third "railroad night" that the association has held and the general policy will be continued.

The annual election of officers of the Houston Traffic Club resulted as follows: President, J. F. Hennessy, Jr., division freight agent, M. K. & T. Railroad; first vice-president, I. R. Palmer, secretary-treasurer, Trinity River Lumber Company; second vice-president, C. H. Pugh, G. A., Missouri Pacific Railroad; third vice-president, S. J. Westheimer, president, Westheimer's Warehouse & Storage Company; secretary, E. L. Williams, T. M., Southern Drug Company; treasurer, A. Kimbell, secretary, Houston Drug Company. Directors, term expiring 1921—Clint Holladay, president, Bond & Holladay Transfer Company; R. H. Carmichael, assistant G. F. A., Southern Pacific Railroad. Directors, term expiring 1922—F. L. Bornefeld, city F. A., Santa Fe Railroad; E. C. Nicar, T. M., Southern Motors Company, Ltd. The election was held at the Westheimer Warehouse & Storage Company's new warehouse unit—the club being the guest of Mr. Westheimer, who had prepared an elaborate oyster luncheon, as well as a musical program. The annual banquet of the club will be held December 14.

The Traffic Club of Memphis, Tenn., held its annual banquet and election of officers November 20. The speakers of the evening were: Lew Dockstader, professional, of the Orpheum Circuit; Fred Collins, vice-president, Bank of Commerce, Memphis, Tenn.; C. P. J. Mooney, editor, Commercial-Appeal, Memphis, Tenn.; A. H. Egan, general superintendent, Y. & M. V. Railroad Company, Memphis, Tenn. Major J. M. Walsh, superintendent of the Illinois Central terminals at Memphis, was elected president of the club. C. S. Russell, assistant freight traffic manager of the Southern Railway, was elected first vice-president, and J. H. Townshend, secretary-manager of the Southern Hardwood Traffic Association, was chosen second vice-president. The directors are: J. M. Beley, A. M. Crawford, B. H. Wallace, R. E. Buchanan, J. B. McGinnis and H. W. Stigler. W. B. Ryan, assistant general freight agent of the Illinois Central, was elected treasurer and L. E. McKnight seclected as secretary, a position he has filled three years with the old organization. He was the choice of both tickets. The election was spirited.

The Transportation Club of Louisville announces a dinner at the Pendennis Club December 8.

### CHICAGO SHIPPERS' CONFERENCE

A permanent organization has been effected of the Chicago Shippers' Conference Association, affiliated with the Chicago Association of Commerce and the Illinois Manufacturers' Association. It is the purpose of this association to consider general traffic matters of local interest to the shippers of Chicago and also to co-operate with the railroads in Chicago. The shippers' section of the Chicago Conference Switching Committee is now a part of the new association and will act as the switching committee; the Chicago Industrial Claim Conference is also a part of this organization and will be known as the claims committee. Other committees will be appointed. The following officers were elected: J. J. Wait, chairman; J. A. Brough, vice-chairman; W. J. M. Lahl, secretary-treasurer; directors, Geo. A. Blair, J. S. Brown, Murray N. Billings, E. C. Wilmore, W. J. Womer and C. T. Bradford, the above officers and directors to constitute the executive committee. Regular meetings are to be held on the first Tuesday of each month, except July and August.

### PARTIAL PAYMENTS TO CARRIERS

Officials of the Association of Railway Executives in Washington declined, November 20, to discuss a report carried in the press of New York to the effect that the carriers planned to test in the courts the question raised by the refusal of the Treasury department to make partial payments to railroads after September 1 under the guaranty provisions of the transportation act. It is understood that the railroads will make additional efforts, however, to obtain a modification of the ruling without resorting to court action. It is also regarded as probable that the railroads will attempt to have Congress enact an amendment to the transportation act providing for partial payments before the final settlement has been effected.

# The Open Forum

**A Department for the Discussion by Readers of THE TRAFFIC WORLD of Transportation Questions of Interest to Traffic Men**

## SPECIAL SERVICES IN TRANSIT

Editor The Traffic World:

With the return of the railroads to private control came the return of the old system of billing and collecting charges for special services performed in transit.

A carload of perishable products requiring refrigeration is billed to re-ice to capacity at all icing stations. Upon delivery of the shipment the consignee is presented with freight bills covering the freight charges, cost of initial icing, and probably the cost of re-icing at one or two points. Thirty days later the consignee is presented with bills covering re-icing charges at other points. The shipment has probably been previously disposed of at a price based on the charges as originally assessed, and as a consequence the consignee is obliged to reduce his profit or increase his loss by the amount of the bills presented subsequent to the original payment.

I believe concerted action on the part of the shippers would induce the carriers to reinstate the system which was in practice during the period of federal control.

M. C. Safford, Traffic Manager,
Sugar Creek Creamery Company.

Danville, Ill., Nov. 15, 1920.

## McCAULL-DINSMORE DECISION

Editor The Traffic World:

I have noted with interest the several replies to my article on the McCaull-Dinsmore decision, but as, by the elimination of section 3, paragraph 3, of the conditions of the bill of lading, the main basis of my argument has been removed, I have no further argument to make at this time.

There is just one fact which may provide food for thought on the part of those who view the situation from a different angle than I, and that is the example now before us in the sugar trade, and which may affect every business in the country.

There are, no doubt, numerous cases right at the present time where sugar is invoiced or the value at time and place of shipment is at least double that at destination, and this condition, which has now existed for two months in the sugar trade, may well affect everyone.

If the carriers should attempt to take advantage of this situation, using the elimination of the bill of lading clause and the McCaull-Dinsmore decision as authority, not only on sugar but on other commodities, during the coming fall in markets, then I can only extend my sympathy to the advocates of the elimination of all standard measures of adjustment and make room for them on the band wagon riding towards a third attempt to establish some standard by legislation.

W. A. Fielden,
5450 Delancey St.

Philadelphia, Pa., Nov. 18, 1920.

## COMMENDS SPEED OF CARRIERS

Editor The Traffic World:

We have read with much interest the various letters contained in your columns, relative to the movement of freight, some of them showing a very good daily mileage and all of them tending to show that the motive power and the efficiency of the railroads in the handling of freight are improving to a noticeable degree, and that at the embarrassing and costly delays in transit are becoming a thing of the past.

We are pleased to advise you of the following shipment which we made:

On November 5 we received an order for a car of mill feed from one of our customers at Nashville, Tenn. We had this feed in stock and immediately ordered a car from the Burlington. They delivered an empty car to the Missouri Pacific that same morning for setting to our warehouse. The Missouri Pacific placed the car shortly after noon and it was loaded in several hours. It was taken from our warehouse and set back to the Burlington during the night and left Atchison some time on the sixth, via the Burlington. We routed this car via the N. C. & St. L. at Paducah, Ky. This car arrived and was delivered to the consignee at Nashville on November 11, or on the fifth day out of Atchison.

We believe this is excellent service, and the daily mileage obtained on this car will no doubt smash a few daily mileages mentioned before in your columns.

The officials of the roads handling this shipment deserve commendation, as service of this kind shows they have obtained a high degree of efficiency in the matter of moving freight.

The Blair Milling Company,
Geo. E. Pucka, Traffic Manager.

Atchison, Kan., Nov. 16, 1920.

Editor The Traffic World:

Having seen several letters in your columns recently commending the good time being made by the railways in the movement of carload traffic, we believe that our experience in shipping carloads from Toronto to Vancouver will be of interest to your readers.

During the six months ending September 30 of this year we shipped twenty-three cars to Vancouver, about equally divided between the Canadian Pacific and Canadian National. The distance is 2,707 miles by the C. P. R. and 2,827 by the C. N. R. Eight of these cars went through to destination and were placed on the consignee's siding within twelve days from the date of shipment, and the longest time taken by any car during the six months was nineteen days. Taking the whole twenty-three cars, we find that the average time, including switching at Vancouver, works out to 14.09 days.

We believe that these figures indicate the high operating efficiency of the Canadian railways.

The Howell Trading and Forwarding Co.,
H. B. Ganton, Traffic Manager.

Toronto, Can., Nov. 20, 1920.

## THE INDUSTRIAL TRAFFIC MAN

Editor The Traffic World:

As a regular reader of your valuable paper, I have taken notice of the various articles published under above heading and, being an ex-railroad man of twelve years' experience, including four years as freight agent, also an extension university graduate in a traffic course, these articles have been of unusual interest, especially those written by Messrs. W. K. Webber and J. O. Richards, appearing in your issue of November 13.

It is quite evident that Mr. Webber has never been in the railroad service, and the assertions made in the first paragraph of his letter are obviously based on hearsay. There is, as Mr. Webber says, a growing need for men with traffic knowledge, and as this department of the industrial business is strictly in matters pertaining to "transportation" the first thought of a traffic manager in selecting an assistant naturally turns to a man with practical railroad experience. I believe that if records could be obtained of the many successful traffic managers today it would be found that a large percentage have in some manner been connected with the railroad service. So far as traffic managers admitting that this experience is more or less narrow and entangled in routine and red tape, I'll grant Mr. Webber that this may be so to a certain extent in connection with "routine and red tape," and this condition may be found in almost any large business; but as to being "narrow" I certainly consider that Mr. Webber is, to say the least, radical in his assertion. In my own experience I have found there are no greater possibilities, or greater opportunities for building up a practical traffic experience than those which can be derived in a large railroad freight office; but, of course, this depends entirely on the character and ability of the person so engaged.

There are lots of big railroad men today who started at the bottom of the ladder, which certainly does not indicate that these men anyway had time to "watch the clock." I am pleased to note that Mr. Richards is more broadminded in his comments upon this subject. Mr. Webber is certainly "out of luck," but this does not justify his attitude towards railroad men. There are just as many ambitious young men in the railroad service who have also recognized the value of a technical training, and the fact that these men have in some instances gained an advantage on account of their practical experience, does not necessarily indicate that a purely technically trained man has no chance. If Messrs. Webber and Richards have qualified in their training and can produce their qualifications in the form of a diploma they should not have a very great difficulty in obtaining a position, and getting a chance with an industrial firm really in need of a traffic man.

There are hundreds of men who have taken a technical training in other lines of business who are, to a certain extent, placed at a disadvantage in obtaining a start in their chosen line from the fact that preference is invariably shown to veterans or

men with practical experience, so why pick on the humble railroad man?

Niagara Falls, N. Y., Nov. 22, 1920. B. Scrivener.

# MUST CARRIER OPEN DOCK?

*The Traffic World Washington Bureau*

A carefully prepared and amended complaint (No. 11889) intended to bring into play paragraph 4 of the third section of the interstate commerce law, which empowers the Commission to require a carrier to open its facilities to another carrier when the public interest requires, has been filed by R. C. Fulbright as attorney for the Port Arthur Chamber of Commerce and Shipping against the Texarkana & Fort Smith and other carriers serving Port Arthur, Beaumont, and other Texas ports. It seeks to compel the opening of the Kansas City Southern's docks at Port Arthur to the Southern Pacific lines. At present that dock is closed to the Southern Pacific except on the term that the Southern Pacific interchange freight at Beaumont and allow the Texarkana & Fort Smith, a subsidiary of the Kansas City Southern a division for a road-haul between Beaumont and Port Arthur, although there is physical connection at Port Arthur between the tracks of the subsidiaries of the Southern Pacific and the Kansas City Southern.

While the purpose is to force the Kansas City Southern to open its dock to the Southern Pacific, the complainant against the owner of the dock company is the commercial organization of Port Arthur and not the Southern Pacific. The theory is that the forced interchange of freight at Beaumont constrains the Southern Pacific to give a preference to other ports to the hurt and detriment of Port Arthur. The Southern Pacific has no dock facilities at Port Arthur, while it has facilities at other ports. The result of the attitude of the Kansas City Southern, the Port Arthur complainant charges, is to deny to Port Arthur through route arrangements with Southern Pacific lines, on import and export traffic, other than lumber and timber.

Affirmatively it is alleged that the Texarkana & Fort Smith switches business at Beaumont which arrives via the Texas & New Orleans (Southern Pacific subsidiary) while refusing to switch for the same carrier at Port Arthur, thereby, it is asserted, placing the industries and members of the complainant at Port Arthur at an undue disadvantage on account of such discrimination against them, and unduly preferring their competitors and the city and port of Beaumont. It is declared that the Texas & New Orleans has arrangements at other ports —namely, Houston and Beaumont—and with its affiliated connections at Galveston, for the through movement of import and export shipments to and from shipside, while refusing a similar provision and arrangement at Port Arthur. It is claimed that, by reason of the refusal of the roads mentioned to make arrangements at Port Arthur similar to those they have at Houston, Galveston, and Beaumont, the commerce of Port Arthur is restricted.

While, in terms, the complaint is against all the roads in the Southwest, it is really directed only against the Texarkana & Fort Smith, the Kansas City Southern, the Port Arthur Canal and Dock Company, and the Texas & New Orleans. The last mentioned is a nominal defendant, because, if the prayer of the complaint is granted, it will be permitted to interchange freight with the Kansas City Southern in Port Arthur, instead of being compelled to interchange at Beaumont and pay a road-haul division on the traffic so interchanged.

Should the Commission issue an order such as has been asked, it is probable the case would be carried to the Supreme Court of the United States, because, in effect, the new part of the third section gives the Commission the power to require one road to grant the use of its facilites to another and competing carrier, on terms prescribed by it.

The prayer in the complaint is as follows:

"Wherefore, complainant prays that defendants be cited to appear and answer this complaint and that after due hearing the Commission make and enter its proper order, finding it to be in the public interest and to be practicable without substantially impairing the ability of any carrier owning or entitled to the enjoyment of terminal facilities to handle its own business, to require that the use of the terminal facilities of defendant Texas & Fort Smith and defendant Dock Company be thrown open for interchange of traffic upon a switching basis at the City of Port Arthur when arriving via the line of defendant Texas & New Orleans Railroad Company, or when destined to points on such line and its connections, upon equal terms and in like manner as other traffic may be handled, and when destined to and from industries on other lines in the City of Port Arthur; and that it shall be in the public interest that through routes be established over the various lines of defendants, via the connection in the City of Port Arthur, between the lines of defendant Texarkana & Fort Smith and defendant Texas & New Orleans, and that an order be entered requiring the establishment of such routes and such interchange of traffic upon a switching basis, and providing for compensation in the event defendants cannot agree between themselves as to the basis of such compensation for the use of any such facilities, or for any services performed in connection with the operation of such through routes, and further finding that the maintenance of the present restrictions described herein are unlawful and in violation of Section 3 of the Act to Regulate Commerce, as amended, and subject complainant and its members to undue and unreasonable prejudice or disadvantage, and that the defendants cease to do and perform such acts; and further that all defendants herein, insofar as their interests shall appear, shall be required to enter into such joint through routes and arrangements for interchange and movement of traffic as herein prayed for, and together with any such further orders, relief and decrees as to the Commission shall seem to be just and proper."

# CLAIM PREVENTION CONGRESS

At the freight claim prevention congress in Chicago last week H. C. Barlow, of the Chicago Association of Commerce, had a place on the program as representing the point of view of the shippers. He followed R. H. Aishton, whose remarks were printed last week. Mr. Barlow spoke in part as follows:

"My observation leads me to believe that a large proportion of the damage occurring in transit can and should be avoided. It is the duty of the shipper to deliver goods to the carrier properly marked and in such containers as will carry the goods with reasonable safety to the point of destination. To this end the carriers have promulgated certain rules and regulations which are intended to and do in large measure surround the transaction with reasonable precaution. Where shippers fail to reasonably conform to regulations of this nature it is the opinion of a large number of shippers that the carriers should refuse the goods, rather than accept them and take the chance of damage which may follow. If this does not seem to be a desirable method to pursue then the carriers might profitably pursue a system of education among shipping clerks, that is to say, where any house persistently delivers goods in improper containers or improperly marked the shipping clerk of that house should be visited in a friendly spirit in an effort to bring about that active co-operation which must exist to get satisfactory results. I have for many years worked along that line in the city of Chicago and I believe the results have been good.

"It should be borne in mind that locomotive power is now perhaps four times greater than tht used twenty years ago. Again, the introduction of the automatic coupler has made possible rough handling of cars in switching service, which was not possible when the coupling had to be made by hand. I have repeatedly seen the ends of cars driven out by the shifting of the load. In my opinion, the rough handling of cars in yards is accountable in no small measure for much of the damage to property in transit.

"There never has been a time in my experience that freight losses have been so enormous as during the past few years. We all know a general cause has been the falling down of the moral fiber of the people during the great war—when life becomes cheap property, of course, becomes of very little value. The war is over and the railroads are in the hands of their owners, and we earnestly hope and pray that with a little of the old-time discipline downright stealing will be reduced to the minimum. But there are some things to be done which I desire to direct your attention to, believing they will lead to minimizing to a certain extent at least the stealing of freight in transit. Let me preface my statement by saying our observation has led us to believe that the character of containers cuts very little, if any, figure in the question of preventing the stealing of freight. In the old days we expected to lose more or less pairs of shoes and undershirts, etc., but in recent years whole cases and entire shipments have been stolen—even whole carloads!

"In our opinion one of the great elements which has made pilferage possible is the slow movement of freight in transit and the leaving of cars of merchandise in outside yards awaiting unloading at inbound freight houses or transfer stations. As to the first phase of the slow movement of cars, I believe we will all concede that there is a greater element of damage and loss while the train is moving slowly and 'killing' time in yards than when it is under rapid movement without 'dead' time. In this connection it is interesting to note that the freight service time from Philadelphia and Baltimore, say, to Cincinnati, is no faster today and perhaps slower than in 1866, about the close of the Civil War. By this I mean the schedule time. I am firmly convinced that if we could have our merchandise trains speeded up and kept in continuous movement it would eliminate a large portion of the stealing.

"I cannot too definitely emphasize the importance of rapid movement as one of the primary elements for the avoidance of loss. For many years the service from New York to Chicago was third morning delivery at Chicago; it is now seventh or eighth day. Surely all of this time cannot be consumed in the running of the train; it must be consumed more or less by delays in terminals, where the loss occurs.

"In conclusion, let the carriers effect a plan for the loading of freight in such manner as will keep freight from being crushed, route the same in such manner as will avoid needless transfers, eliminate leaky roofs, keep merchandise trains moving, avoid setting out cars subject to pilferage in outside yards or at division points, mend broken doors, improper hangings and lockings, and, in my opinion, claims for loss and damage will be greatly reduced."

The following resolutions were adopted:

### Duty of Carriers to Themselves and to Each Other in the Prevention of Losses and Damages

Whereas, the proper fulfillment of carriers' duty to themselves requires provision being made for means to protect freight against avoidable causes of loss and damage, and as there is an inter-related duty of all carriers to each other in respect to the handling of interline freight in so far as cooperating to the fullest extent, and it being recognized, that, in order to obtain the highest degree of efficiency in the fulfillment of these duties that will be consistent with practical operation in the handling of freight traffic;

Be it resolved, That all carriers be urged to immediately provide for a prevention organization that will afford means whereby a systematic study of causes contributing to loss and damage to freight may be made and means provided to eliminate those of an avoidable nature, and the interchange of helpful information and ideas through the medium of other lines.

### Employe Co-operation in Such Existing Organizations

In order that employes may be encouraged to take an active interest in the handling of the business of the railroad to prevent freight loss and damage,

Be it resolved, That there be established on each railroad, district, divisional and terminal committees, composed of representatives of each branch of service on every division and terminal, such members to be selected for their interest in the work and who will stimulate interest among their co-workers, selecting a chairman and meeting periodically, and that these committees be supported in their work by periodical meetings to be held in stations by station forces to discuss the handling of the business of their stations to save claims, as well as to suggest subjects for the district or divisional meetings or develop subjects received from time to time, and that the proceedings of all such meetings be distributed among employes and also referred to general committee for such handling and action as is necessary on matters pertaining of a general nature and changes in general policies.

### Methods of Utilizing Established Organizations, Such as Weighing and Inspection Bureaus and Others in Position to Assist in Prevention of Freight Claims

Resolved, That there should be the fullest cooperation as between all carriers and weighing and inspection bureaus and all organizations formed for the control of freight loss or damage and that this cooperation should be particularly extended in the application of corrective measures as would best be determined by the activities of the weighing and inspection bureaus.

### Methods for Exchange of Information and Establishment of Practices Between Interested Lines to Correct Conditions Creating Claims

Whereas, it is necessary that cooperative efforts be taken between all carriers to successfully avoid claims on interline traffic, it is

Resolved, That it is the sense of this meeting that when errors or negligence are developed a report shall be rendered at least monthly to the billing or loading carrier, either by submitting copies of all O. S. and D. or other reports issued against the billing or loading carrier, or a statement giving all essential information from such reports, which shall be investigated and remedial measures applied.

## LAKE-AND-RAIL RATES

*The Traffic World Washington Bureau*

Joint rates between the railroads and the Great Lakes Transit Corporation are going to be kept in for at least six days longer than the rail carriers intended. The Commission, just before the close of business on November 23, in I. and S. No. 1245, suspended supplement 18 to Davis's A-11 from November 24 to March 24, thereby cancelling the seasonal cancellation of lake-and-rail and rail-lake-and-rail rates, which heretofore has always been made because the carriers by water, during the winter, are not able to perform the services offered in the tariffs operative between April and Novmber, both inclusive.

In suspending the tariff, the Commission acted on a protest made by F. A. Stanley, freight traffic manager for the Great Lakes Transit Corporation. That corporation is a party to the tariff and its concurrence is on file with the Commission authorizing Davis to file tariffs for it. Technically, therefore, the transit corporation has procured the suspension of one of its own tariffs.

Telegraphic correspondence in the Commission's files, all dated November 23, is taken as indicating that there is disagreement between the lake line and its rail connections as to when the seasonal suspension of the tariffs should take place. Some time prior to November 15 the lake line put out a circular notifying shippers that it was then expected that the last westbound sailing of its steamers would take place at 8 p. m., November 30, but that all freight forwarded after November 1 would be accepted subject to all-rail routing at all-rail rates in the event of being in excess of the available vessel capacity at the time of arrival at port of transshipment, or of arrival too late for forwarding by vessel. The company said it expected to be able to forward all freight delivered to it by 8 a. m. of November 30.

Cancellation of the joint rates on November 24 would have compelled the lake line either to let the ships go without freight received after November 26, or run the risk of being called to account for carrying traffic without having its tariffs on file with the Commission. Cancellation of the rates on November 26 would have made it impossible for the boat line to have obtained any traffic from the railroads that had been tendered on Thanksgiving Day or later, because it would have been illegal for the carriers by rail to have accepted any on November 26 or later.

According to the representation made to the Commission by Mr. Stanley, the rail carriers acted arbitrarily in filing the cancellation supplement. In his telegram to the Commission he said:

Referring Supplement 18 to Davis's A-11, issued November 19, wholly suspending rates for season 1920 in connection with Great Lakes Transit Corporation, November 24, and carrying other reissued items, I wrote Chairman Collyer, chairman Trunk Line Association, November 2, copy to Davis requesting suspension as of November 30, in order to give shipping public advantage of lake-and-rail rates up to last moment. Our last steamers leave Buffalo, Erie and Cleveland night thirtieth and need all westbound tonnage they can get. In my letter to Collyer I specifically asked for conference with his committee in case there were objections to our suggested date of November 30, but, without communicating in any way with us, they have arbitrarily suspended rates November 24. There is considerable business, much of it originating at points near by lake ports which can be shipped as late as twenty-eighth or twenty-ninth with reasonable certainty of reaching us in time to go forward. We protest this arbitrary action of trunk lines not only because it is discrimination against us, but also against shippers who wish to take advantage of lower lake-and-rail rates and we respectfully ask that Supplement 18 be rejected by your honorable body."

Secretary McGinty notified Chairman Collyer of the protest. Chairman Collyer, in answer to the representations of the ship line, said:

"Subject was considered by the carriers last week and decided that November 24 was the latest date that could be established for the forwarding of lake-and-rail traffic in connection with the Great Lakes Transit Corporation from trunk line territory, as this date allows six days prior to departure of last boat from lake ports, and, with Thanksgiving Day and Sunday intervening, it was felt that six days was the very lowest time that should be allowed. This period of time is the same as has been in vogue for some years past."

## N. I. T. L. MEETING

(By a Staff Correspondent at New York)

New York, N. Y.—The National Industrial Traffic League the afternoon of November 19 ended the largest and what was pronounced by President Chandler the most successful meeting in its history. The registration was 437, which would indicate an attendance of at least that many and perhaps upwards of 450 members. The feeling that the meeting was unusually successful was caused mainly by the fact that the carriers had sent emissaries bearing messages of peace and the resulting prospect of a real getting together on a practical co-operative basis.

The entertainment features were exceptionally good and the local individuals and organizations responsible were the recipients of much thanks and praise. The banquet the evening of November 18 met with special approval, not only on account of the excellence of the menu, the service, and the entertainment, but by reason of the character of the addresses. One of the jokes of the evening—which it did not develop clearly was a joke until the next day—was the introduction of one of the speakers as Congressman A. B. Hastings of Mississippi. President Chandler sat next to him at the speakers' table and engaged him in more or less intelligent conversation as to the railroad situation in the South. His address was purely humorous, but even so might have come from the mouth of a congressman. It developed however, that he was a Brooklyn actor who makes an income by impersonating the great and the near great at banquets.

Seth Mann of San Francisco made an eloquent appeal for the League to come to that city for a meeting in the near future, not only for the enjoyment of the members, but as an advertisement for the organization in Pacific coast and intermountain territory, where its membership is small. C. E. Childe also invited the League to come to Omaha, pointing out that a meeting had never been held in a Missouri River city. President Chandler said he thought both things ought to be done, but the matter rests with the executive committee.

Professor Ripley, of Harvard, whom the Commission has employed to make a preliminary study of railroad consolidation under the provisions of the transportation act, held a conference here the evening of November 19 with several members of the League in order to get their ideas.

### Universal Telegraphic Code

C. T. Bradford, at the closing session of the League meeting, made the following report for his committee on a universal telegraphic code.

Progress in working out a possible uniform telegraphic code has been very greatly delayed owing to return of the railroads to private management, and our having to begin our negotiations anew with the American Railroad Association.

However, your committee met a committee representing the telegraph and telephone section of the A. R. A. at Chicago on October 28, at which time the matter was quite fully discussed and the railroad committee expressed themselves as favorably disposed to a small, comprehensive code, which at first would be in the hands only of the railroads at their general and divisional offices, later on to be placed in the hands of all local freight agents if this seemed necessary and practicable.

They are to report their recommendations back to their executives, after which another meeting will be held to endeavor to work the scheme out in detail.

### Legislative Committee

The report of the legislative committee, U. S. Pawkett, chairman, was as follows:

Following action of the Executive Committee endorsing the principles of the Poindexter Bill, S-4204, the action at the Philadelphia meeting was to continue the bill in the hands of the Legislative Committee, with instructions to keep in touch with it. Consideration has since been given to the bill, but definite conclusions have not been reached by the committee. Question has been raised as to the constitutionality of the first section, as possibly being in restriction of freedom of press and liberty of free speech. This possibly has led to expressions, referred to in the committee's report to the Philadelphia meeting, by some members of the Senate, that it would not be possible to pass the bill in its present form. It is the view of the committee that the enactment of this bill, or one with similar provisions, modified so as to avoid any question of its constitutionality, should be supported by the League, as the moral effect secured by its enactment would go far toward retarding many sporadic and possibly more widespread interference or attempted interference with commerce.

Further suggestion has been made that possibly dealing with this question by the different states according to their local conditions would prove even more salutary in connection with the national legislation than could otherwise result. Notable instances of state action are those of Kansas in the creation of its Court of Industrial Relations, and of Texas, in the enactment of its so-called Port Bill, which becomes effective January 1, 1921.

Without further instructions the Committee will keep in touch with the bill as instructed.

#### Commercial Bribery S-1024

The committee is of the view that it will be impossible to suppress this growing evil without the enactment of stringent legislation on the subject. The committee is further of the view that a suggestion to exempt the giver of bribes from culpability, or an attempt to differentiate as between courtesy and bribery, would be unwise, and result in weakening the effect of the law when passed. Unquestionably the giver of a bribe is as culpable as the one who solicits, accepts or receives. In view of the fact that the legislation as proposed, if enacted, would apply with equal force to all business a part of, or affecting, interstate commerce, and not be confined to bribery among railway employes, probably a third section should be added charging the Federal Trade Commission with the duty of enforcing the law. The Federal Trade Commission did a great deal of work toward the suppression of this evil until a decision by one of the federal courts that the law gave them no authority brought about a cessation of their efforts. It is the view of the committee that the provisions of S. B. 1024 will go as far as the law can reach to remove, or at least minibize, this evil, and recommends that such action by Congress be advocated. It is felt that the moral effect of the existence of such a law will go far to at least minimize the evil, even though resort to the courts and prosecution under its terms should not be had.

#### Liability of Carriers by Water

At the spring meeting in St. Louis this subject was continued in the hands of the Legislative Committee with instructions to take necessary action to have the Transportation Act corrected so as to provide that when shipments move via rail and water route on joint rates the liability of the participating water carrier would be the same as that of the carrier by rail in the case of loss or damage to the freight. This has been the subject of correspondence with the League's counsel, Mr. Walter, who submitted two propositions, one to repeal in full Section 437 of the 1920 Transportation Act, which would have the effect of restoring the status quo of February 28, 1920, and the other, an amendment to provide that where damage or injury occurs while the property is in the custody of the carrier by water under such through rates, its liability shall be determined by and under the laws and regulations as applicable to transportation by water, the liability of all other interested carriers to be determined under the provisions of the Interstate Commerce Act, as amended. So far as the views of members have been received, the opinion is about evenly divided as between the two propositions, practically all agreeing, however, that as to such transportation, particularly, inland and coastwise, the risks by water are minimized, and that if shippers are compelled to assume greater risks there will be little, if any, inducement to use the water and rail routes, particularly in view of the fact that differentials have largely been either reduced, or entirely eliminated. It is the view of the chairman that the proposition to have Section 437 repealed, thus restoring the situation as it was, and so be in conformity with the decision of the Interstate Commerce Commission in the Bill of Lading Case, should be adopted.

#### Amendment to the Fifteenth Section

The matter of re-enactment of the so-called Smith Amendment to the Fifteenth Section, which expired by limitation January 1, 1920, has been suggested to the committee, and is now the subject of correspondence. The time has not been sufficient, however, to permit the necessary consideration by the committee, which cannot, therefore, make a report at this time. In this connection, however, attention is called to the fact that the subject was referred to the Executive Committee at the annual meeting in November, 1919, for further consideration and report to the League, before further action was taken with respect thereto. The sentiment for the re-enactment of this amendment has been aroused particularly in the Southeast and Southwest, on account of the action of carriers in those sections in the cancellation of commodity rates and increase in classification ratings, which, it is stated, will serve to still further increase the level of rates established by the Commission in its decision in Ex Parte 74, it being the view of proponents that the Commission in its order made ample provision for necessary revenue to the carriers without making the rate level still higher. In the absence of expression of views of the committee, the chairman has thought it proper to suggest consideration of the subject at this time.

#### General

At the time the committee's report to the summer meeting was prepared, the view was widely held that Congress, then in session, would take a recess until shortly after the nominating convention, when it would reconvene and give consideration to its calendar. Contrary to that expectation, adjournment was had. This leaves all pending bills in their regular place on the calendar and subject to consideration at the forthcoming short session. The committee, therefore, desires to call attention of the membership to the fact that the following important bills will be considered:

Interference with Commerce—SB-4204.
Commercial Bribery—SB-1024.
Lake and Rail Service on the Great Lakes—SB-4254.
Withdrawal of Water Transportation Service—HB-12953.
Liability of Telegraph Companies—SB-4336.

The committee will, of course, give its close attention to carrying out the instructions of the League with respect to all of these bills, but it suggests that the members generally confer with their senators and congressmen on these subjects, in line with the expressed views of the League. Such action on the part of the membership will go far toward achieving the ends desired by the League, through making the membership of Congress more intimately acquainted with the attitude of the shippers. No bill has been introduced with respect to proposed action on Section 437 of the 1920 Transportation Act, and the same recommendation is made with respect to this subject for attention of the membership when the bill making the proper amendment shall have been introduced.

The part of the report referring to interference with commerce (Senate bill 4204) was received and approved. With reference to the part of the report concerning bribery, it was voted to leave the matter in the hands of the committee. The matter of liability of carriers by water was referred to the executive committee with power to act. With respect to that part of his report concerning amendment of the fifteenth section of the act, Mr. Pawkett pointed out that, by reason of the peace overtures made by the carriers, conditions had changed since his report was written and, at his suggestion, the matter was allowed to remain in the hands of the committee pending the conference with the carriers as to the grievances of shippers set forth in the Chicago resolutions of October 22.

### Report on Spotting Charge

Following is the resolution of the executive committee, adopted by the League, with reference to the report of the Heinemann special committee on the spotting charge matter:

Resolved, That the report of the Special Committee on Allowances to Industrial Roads and Charges for Spotting, as amended, be received, and its recommendations approved.

Be it further resolved, That the special committee be continued with power to act as may be necessary to carry out the policy outlined therein; and

Be it further resolved, That copies of the special committee's report and these resolutions be sent to the Interstate Commerce Commission, and the various state commissions, and the members of the Railroad Executive Traffic Committee.

Be it further resolved, That the executive committee express its commendation of the good and thorough work done by the special committee which has handled this subject.

## UNION PACIFIC EXTENSION

*The Traffic World Washington Bureau*

A certificate of convenience and necessity authorizing the Union Pacific to extend its line in Scotts Bluff county, Nebraska, and Goshen county, Wyoming, has been issued by the Commission in Finance Docket No. 40. The carrier also is authorized to retain excess earnings from the extended line for a period not to exceel ten years.

The Commission's report shows that the present North Platte branch of the Union Pacific extends from applicant's main line near O'Fallons, Nebr., westerly approximately 2 miles beyond Haig, Nebr., forming a sector in a proposed main line between O'Fallons and Medicine Bow, Wyo. The line now proposed would extend the North Platte branch approximately 30.3 miles through Scotts Bluff county to a point in section 6, township 22 north, range 62 west, in Goshen county, and provide a 13.2 mile branch from a point in section 5, township 22 north, range 62 west, to a point in section 25, township 24 north, range 62 west, making a total extension of 43.5 miles, at an estimated cost of approximately $3,835,000.

The proposed line will serve an agricultural territory now being developed by the construction of the Fort Laramie unit of the North Platte irrigation project of the United States Reclamation Service. The applicant estimates that it will have an average net income of approximately $50,400 for the first five years of operation, or about 1.3 per cent on the estimated cost of production. The Commission said the construction of the road would not be justified on that showing, but that it appeared that the territory to be served would develop rapidly, with transportation facilities and irrigation, and afford the applicant a profitable traffic.

## M. & ST. L. NOTES

The Minneapolis & St. Louis asks for authority in a petition filed with the Commission to issue its rent notes for $5,925,000 in connection with participating in the National Railway Equipment Corporation equipment trust to finance the purchase of 15 freight locomotives at $64,365 each; 500 box cars at $3,000 each; 500 open top cars at $2,800 each; 200 refrigerator cars at $3,800 each, and 500 other freight cars at $2,600 each.

# REPORT ON SPOTTING CHARGE

(Report to The National Industrial Traffic League of its special committee (C. B. Heinemann, chairman) on allowances to industrial roads and charges for spotting.)

To the Executive Committee and Members of the National Industrial Traffic League:

The special committee appointed at the Louisville meeting for the purpose of developing all facts in connection with the carriers' proposed plan of changing the present regulations covering delivery to and receipt of freight from industries began work immediately thereafter.

After first obtaining from the committee members suggestions as to the information to be developed, a questionnaire was prepared and distributed to the full membership of the League, this embodying questions the answers to which were essential to the proper consideration of a question of such grave importance.

From the beginning your committee members approached the subject with open minds, having in mind the explanation made in behalf of the carriers by Chairman Eysmans at Louisville. Every subsequent act of the committee was directed toward the development of every valuable fact that would throw light upon the subject and thus enable the League membership to fairly determine their future actions.

Details of the responses to the questionnaires are unnecessary, but it may be well to state that the reports received and now on file are from concerns who annually receive and ship 2,150,088 carloads of freight. Added to this staggering total are more than two million cars of freight handled by industries whose members made only a general response to the questions.

Following out a well defined plan of procedure, the committee met in Pittsburgh, October 26, preliminary to a joint meeting with the railroads the following day.

Your committee thought it advisable and did prepare a list of 21 questions to be propounded to the carriers' committee, and these are of such importance it seems advisable to here repeat our interrogatories and the carriers' answers thereto. These follow:

Question 1—We would like to preface our further discussion by asking, on behalf of the League, whether this proposal is the result of the Commission's decision in the U. S. Cast Iron Pipe and Foundry Case, referred to in your letter September 17, 1920, to President Chandler, or if you base it on other decisions of the Commission and, if so, upon what ones?

Answer 1—The plan proposed by the railroads is believed to be supported at every point by the current decisions of the Interstate Commerce Commission. Without intending to cite every one of these decisions, the following, it is believed, constitute ample justification for the plan:

Buckeye Steel Castings Co. vs. Railroads, 58 I. C. C. 500—1920.

American International Shipbuilding Corporation vs. Railroads, 57 I. C. C. 90—1920.

Pittsburgh Plate Glass Co. vs. Railroads, 58 I. C. C. 81—1920.

Pittsburgh Forge and Iron Co. vs. Railroads, 59 I. C. C. 29—1920.

Riter Conley Mfg. Co. vs. Railroads, 58 I. C. C. 327—1920.

U. S. Cast Iron Pipe and Foundry Co. vs. Railroads, 57 I. C. C. 442—1920.

U. S. Cast Iron Pipe and Foundry Co. vs. Railroads, 59 I. C. C. 59—1920.

Donner Steel Co. vs. Railroads, 57 I. C. C. 745—1920.

Question 2—Is the tariff a revenue measure or merely (as it is purported to be) an effort to relieve existing discriminations?

Answer 2—The proposed rules are not designed as a revenue measure, but are an effort in co-operation with the National Industrial Traffic League to adopt some uniform and non-discriminatory measure to settle the general question in a manner that will be fair and reasonable to all interests concerned.

Question 3—What is the carriers' estimate of the amount of additional revenue in charges and also in saving of expenses?

Answer 3—Not being a revenue measure, no statistics have been prepared.

Question 4—Is there any proposal to reduce the line-haul rates to reflect the lesser service than has heretofore been included in the line-haul rates?

Answer 4—No; this proposition merely seeks to define the terminal service included in the line-haul rates.

Question 5—How do you define "simple switching," and will you give us some illustrations covering the various forms or phases included in your definition?

Answer 5—See questions Nos. 8 and 15;

(a) The test of the extent of carriers' legal obligation as to spotting of carload freight on private sidings is that such service shall not exceed the service rendered in spotting cars on typical team track deliveries, or in typical shunting of cars upon the private siding of plants clear of main tracks.

(b) As the magnitude of spotting service on private sidings becomes greater than the equivalent of typical team track spotting, the demand upon the carrier exceeds the service contemplated in the transportation rate.

(c) Any service performed by a shipper in excess of carrier's legal obligation as to delivery defined in (a) and (b) above is a voluntary service for the shipper's own convenience and for which the carrier should not make any allowance.

(d) Where industries are accorded the equivalent of spotting service rendered to shippers who receive team track or single spotting service, the carrier has performed all obligations of delivery contemplated or in any way intended should be included in the line-haul rate.

(e) The obligation of carrier has been fully discharged when cars have been spotted on the interchange track or simply spotted on private sidings shall fall under Rule A.

Question 6—Will you interpret your definition as to the rough diagrams I hand you so we may understand?

(a) The limit of carrier's obligations as you interpret it, i. e., "simple switching."

(b) The beginning of consignee's obligation as you interpret it, i. e., more than "simple switching."

Answer 6—Answers to be found on a sketch submitted and reproduced on page 3. (Page 3 is reproduced in accompanying cut on next page.)

Question 7—What is your committee's definition of "Interference" within the plants?

Answer 7—Any request of the plant or obstacle arising by reason of inherent nature or method of plant operation which prevents one continuous uninterrupted movement undertaken in the spotting of cars.

Question 8—Paragraph (b) of the proposed tariff reads: "Spotting service as described in 'a' when performed for account of industries whose plants cover large areas and "or" have a system of tracks * * *."

(a) What is meant by the term "cover large areas"?

(b) What is meant by the term "system of tracks"?

(c) Is it intended that the plant which covers a large area but has only one track shall be subject to the charge provided for in paragraph (c)?

(d) Is it intended that the plant which has a system of tracks but which covers only a small area shall be subject to said charge?

Answer 8—If the service involved exceeds that described in answer to question No. 5, such plants would be treated under proposed Rule B.

Question 9—In paragraph (c) of your letter, you contend that the allowance should be uniform. While the obligation of the carrier is the same in all cases, may not the service to discharge that obligation differ considerably in different cases? If you make uniform allowances, would it not in some cases result in a profit and in some others result in an actual heavy loss to the industry?

Answer 9—This evidently refers to proposed Rule D. The obligations of carriers with respect to delivery does not differ as between different industries, and for that reason a uniform allowance should be made. As it is not required that the industry shall perform this service, it is manifest that they cannot suffer any loss.

Question 10—Is it at the carrier's option as to when they shall do the spotting or simple switching service, or shall it be at the shipper's option under paragraphs (c) and (d) of the proposed tariff?

Answer 10—The carriers shall have the option of performing all service which they are obligated to perform.

Question 11—What statistics have the railroads compiled showing

(a) Number of cars moving to and from team tracks?

(b) Number of cars moving to and from simple sidings?

(c) Number of plants with "large areas"?

(d) Number of plants with "system of tracks"?

(e) Number of plants with simple siding deliveries?

Answer 11—None.

Question 12—Have the carriers any showing to indicate that placement for industries in the free class is not more expensive than placement for industries in the class subject to a charge?

Answer 12—No.

Question 13—What is the cost per car or per ton for delivery on team track or simple siding, as contrasted with the other class of delivery?

Answer 13—No study has been prepared.

Question 14—Is the charge to be collected by the carriers based on rates, and the allowance to be paid the industry based on costs?

Answer 14—Charge under proposed Rule C based on charges already existing for comparable services. Allowances under proposed Rule D would be under an average cost.

Question 15—Is there any intention of listing the industries, such lists to be published as part of the tariff, specifically naming the industry falling within the several classes (a), (b) and (c) as set out in the proposed tariff?

Answer 15—Yes, those under Rule B—See Answer to Question No. 5.

Question 16—Is there any basis, further than set out in tariff, for determining what industries come within the several classes?

Answer 16—None contemplated.

Question 17—In the case of an industry with an interchange track, do the railroads consider the placement of a car on said interchange track equivalent to so-called "simple switching"?

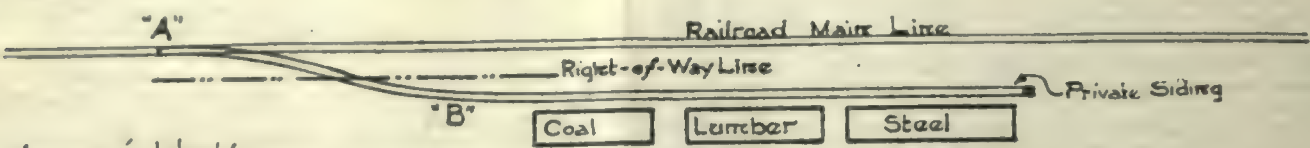
Answer 17—Yes.

Question 18—If so, what is the comparative cost to the railroads of simple spotting on individual sidetracks, versus the cost to railroads of mere placement and removal on and from industrial interchange tracks?

Answer 18—Cannot answer, as no such study has been undertaken.

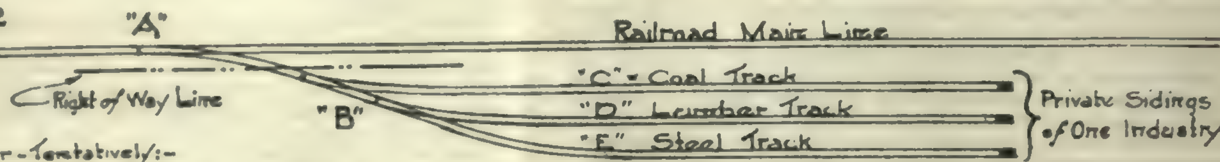
Question 19—An industry doing its own spotting receives its inbound cars on tracks located on plant property and de-

No. 1



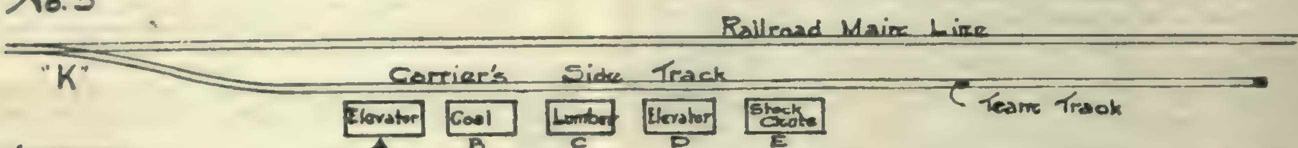

Answer- Tentatively:-
Would be subject to proposed Rule "B"

No. 2



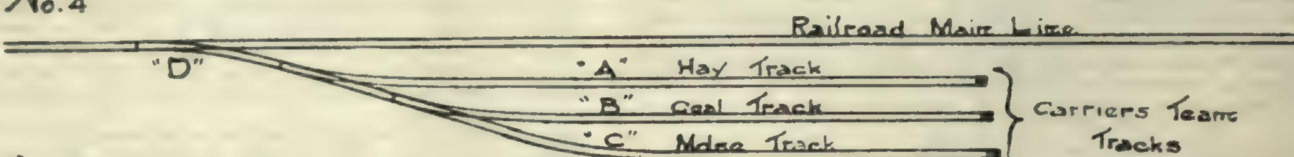

Answer - Tentatively:-
Would be subject to proposed Rule "A"

No. 3



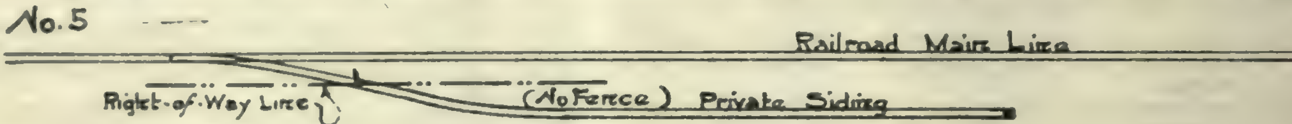

Answer:-
This is an exceptional case and is not a situation coming under the application of proposed rules.

No. 4



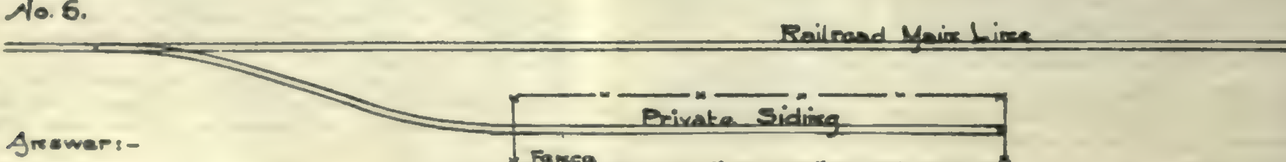

Answer:-
This situation is not involved in the proposed rules. Being purely one of Team Tracks of Carrier.
It is not a private Siding Situation.

No. 5



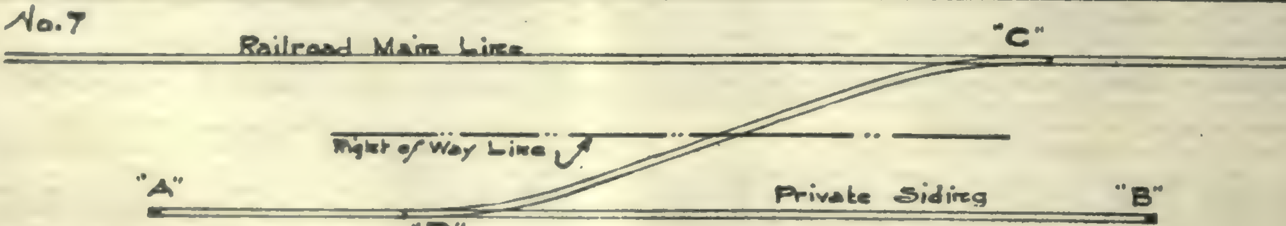

Answer:-
Would be subject to proposed Rule "A"

No. 6.




Answer:-
If no interference, subject to Rule "A"

No. 7




Answer:-
If "A" to "D" is for Head Room only — this would involve simple switching.
"A" to "B" Single Siding of one Industry.

livers its outbound cars to a nearby track owned by the railroad. Does simple switching include the service performed by the plant power between said inbound and outbound tracks and the plant loading and unloading tracks?

Answer 19—Where tracks are set aside for receipt and delivery of cars between plant and carrier, regardless of whether on property of plant or carrier, would be deemed points of interchange and carrier's obligation would end on inbound and begin on outbound at such interchange points.

Question 20—An industry with its own power moves its inbound and outbound cars between delivery and receiving tracks assigned to the use of the industry located in the nearby railroad yard, and the plant loading and unloading tracks. Does simple switching include the spotting service performed by industry power?

Answer 20—See answer to Question No. 19.

Question 21—What effect would your proposal have on the allowance granted to a common carrier short line where said allowance contemplated performance of full terminal and spotting services to loading and unloading points within the plants?

Answer 21—The common carrier obligation as proposed by carriers would apply to all common carriers—industrial or Trunk Line.

### A Brief History of American Railroad and Industrial Development

In the beginning of the development of American industries it was sufficient that they should receive or handle the major portion of their tonnage in less carload quantity through the local freight houses. Then came the increased carload movement and the installation of team tracks. Later industries located alongside these general tracks commonly called "house" tracks, and still later the industries and railroads found it more convenient to serve these industries, by means of spur tracks leading from house tracks, passing tracks and often the main line.

Congested transportation facilities in the railroad terminals and the almost fabulous prices asked for real estate in the districts nearby prohibited the industries from expanding or developing in their original locations, and likewise prevented the location of newly formed industries in those districts. The marvelous growth of American industries and the failure or inability of American railroads to keep pace with this development accounts for the original and subsequent investments in these so-called industrial railroads.

Perhaps the railroads would have met the increased demand for additional facilities to take care of the shipper's needs, but unquestionably they did not do so. The shippers faced the unpleasant alternatives of continuing in business circumscribed and held back by the limited facilities of the carrier, or they might make the investment necessary to provide themselves with railroad facilities in districts where their expansion was not thus restricted.

This committee views each additional track an extension of American railroad mileage and as an addition to the terminals of the railroads. The fact the carriers were relieved of the necessity of making tremendous investments to provide additional terminals renders these tracks of no less value to them. Instead of resulting in preferential treatment to the users of such tracks, the relief afforded the general terminals has obviously reflected to the benefit of other shippers who continue to use them.

The railroads make no serious attempt to dodge the responsibility for providing facilities and receiving or delivering freight upon their team tracks at the flat rate. It has also been customary to provide for the receipt and delivery of carload freight on private sidings without the imposition of a separate charge. All points within the defined terminal districts were treated as entitled to the base rate, and this fact largely accounts for the wonderful development of outlying districts suitable for industries and industrial development.

### American Rates and Others

We are here concerned with an American problem and its settlement must be in keeping with American traditions and customs. It matters not that English laws may establish a maximum scale of rates to cover conveyance and a separate schedule for terminals. This committee is dealing with the problem solely from the American viewpoint.

Our carload rates have from the beginning included the following:

(a) Furnishing the car.
(b) Furnishing a place to load it.
(c) Conveyance of the car and contents.
(d) Terminal delivery to a place for unloading.

All of these are included in the term "transportation" and the complete rate comprehends the four factors. This is true by custom and likewise true as a matter of law.

This is not a denial of the right of the carriers to separately state their charge for terminal service, as recognized by Section 6 of the Interstate Commerce Act; but this has not been done in this country, and as stated by the Commission in the Car Spotting Case, 34 I. C. C., 609, 620,

> "before that could be done there would have to be a separation of the cost of the line haul from the cost of the terminal service, and a complete reconstruction of the rates."

It is to be noted that no such "reconstruction" is planned by the carriers.

### Removing Discriminations or Increasing Revenues

We were assured by carriers' representatives that their proposed plan had nothing to do with the effort to increase their revenue, and that they merely sought to find some equitable plan of settling the general question in a manner that would be fair and reasonable to all interested.

This statement while apparently made in all sincerity by the Carriers' Committee does not square up with the following communication, confidential in terms, but issued by the Traffic Executive Committee of the Eastern Lines over the signature of their secretary, which with the enclosure is as follows:

TRAFFIC EXECUTIVE COMMITTEE
EASTERN TERRITORY
143 Liberty St.
New York, July 20, 1920.

Gentlemen: File 549.

In connection with the question of increased revenues, the enclosed proposition has been offered.

Will you kindly consider this matter, treating the same as confidential, reporting to me your views.

It is self-evident that a matter of this character should not be made public and that no discussions of same with shippers should be had before a conference is held and some action is taken one way or another.

Yours truly,
TRAFFIC EXECUTIVE COMMITTEE
EASTERN TERRITORY
J. Gottschalk, Secretary.

Enclosure.
Copy.

### Memorandum Covering the "Enclosed Proposition" Referred to

(a) Freight rates as published will apply between public stations of carriers.

(b) The delivery to a private siding, or the taking of a car from a private siding, involves special switching, and should be charged for in addition to the rate. Such delivery is of more

value to the owner of the traffic, because it avoids the haul from the freight station and saves the expense thereof, so that it would seem proper to make a reasonable charge for this storedoor delivery of the traffic or taking the traffic from the storedoor.

(c) The taking of a car from, or delivery to, a private siding would include only the movement of the car to the extent of what is defined as "simple switching" in the Commission's decision in the U. S. Cast Iron Pipe and Foundry case, and for any service within the plant beyond such "simple switching" a proper charge should be made.

(d) A charge of $2.00 for taking a car from, or placing it on, a private siding would be much cheaper than if hauled from a public freight station, and it would not seriously depreciate the value of a private siding; nor would it, to any extent, tend to crowd the public freight station.

(e) It is estimated there are about 75,000,000 movements to and from private sidings per annum, which serves as a basis for accruing additional revenue by making such a charge.

(f) As a recollection of Mr. Brandeis' theory in the first Five Per Cent case, it was his claim that the handling of cars to and from private sidings was discrimination in favor of the owners of these sidings as against the small shipper who had to use the public freight station, and that the service of storedoor delivery was valuable; the serious difficulty being that while in point of principle, the number of shippers now owning private sidings is tremendously greater, in point of tonnage the private siding owners are equally in excess. Moreover, the private siding owners are organized, as the membership of the N. I. T. L., the various chambers of commerce, traffic associations, etc., are almost all owners of private sidings, while the very large number of shippers not owning private sidings are not so organized.

(g) Where a freight rate is advanced, the shipper has ready means of applying the advanced rate to his prices, but where a service is charged for, it is difficult for him to add this, or at least it is much more indefinite, so that the real antagonism against a charge for private siding delivery is on the ground that shippers cannot pass this on to be distributed among the consumers, but must assume it as an additional expense of operation.

(h) The Florida East Coast R. R. has consistently applied this principle, and because of its consistency has been successful in defending it, their charge being $2.00 or $2.50 per car for each movement to or from a private siding.

Your committee is convinced that if increased revenue was not to be thus obtained this proposition would not have been put forward.

### The "Harlan Plan" by Another Name

While the Carriers' Committee stated that the impression was incorrect that they "were going back to the Harlan idea of spotting," the plan now proposed by the carriers does not differ in any substantial respect from that proposed in 1915 and condemned then by the Commission. The language of the proposal and the form of the tariffs is only slightly different; the substance is the same. The tariffs filed in 1915 and condemned as improper, provided:

"'Spotting' service is the service beyond a reasonably convenient point of interchange between road-haul or connecting carrier and industrial plant tracks, and includes:

(a) One placement of a loaded car which the road-haul or connecting carrier has transported, or

(b) The taking out of a loaded car from a particular location in the plant for transportation by road-haul or connecting carrier.

(c) The handling of the empty car in the reverse direction."

It is impossible to distinguish the present proposal from that laid before the Commission in 1915.

While theoretically it might appear not wholly undesirable to permit some restriction upon the deliveries that the carrier is required to perform without additional charge under the line-haul rate, in practice it would be utterly impossible to draw any line of demarcation or express a definition that would not result in gross discriminations as between different shippers not dissimilarly situated.

The carriers were answered in the former case by the Commission in their decision where at pages 618 and 619 we find the following language:

"To permit the carriers to add to the line-haul rate a charge for the movement of cars incident to the receipt and delivery of carload freight at industries selected because of their size or complexity, or upon some other basis equally uncertain, while treating a like service at all other industries as covered by the line-haul rate, would result in unjust discrimination of a flagrant character.

"The argument that while the line-haul rate may cover the movement incident to the receipt and delivery of carload freight when that movement is over an ordinary industry spur it does not cover a like service when the movement is over the interior tracks of an industrial plant is founded upon the assumption that the carrier and the industry have the joint use of the industry spur, while the interior tracks of the industrial plant are used exclusively by the industry. The fact is, however, that the service which the carrier renders in the movement of cars over the interior tracks of the industrial plant for the purpose of receiving and delivering carload freight of the industry is a public service, and the tracks are used both for that public service and for the private purposes of the industry. It is immaterial that the carrier may not use the tracks for all the purposes for which it uses the ordinary industry spur. The difference is merely one of degree and not of kind."

### Comparative Costs of Team Track vs. Industrial Track Delivery

Responses to our interrogatories show conclusively that the carriers have made no attempt to compare the costs of team track deliveries with industrial track deliveries. So many elements enter into such a comparison that a comprehensive discussion of it is impossible in this report.

Obviously the switching cost alone cannot be accepted as the yard stick else the carriers' case falls flat. The investment feature affords no comparison since the shipper using industrial sidings has assumed that. The location of team tracks in downtown congested districts is a factor of considerable importance in such a comparison.

For each seeming advantage to the shipper may be found compensating advantages to the carrier. Relief of terminals, release of equipment, less investment in terminals are only a few of the many points in favor of the carrier.

Upon superficial view it might appear that as the larger industries have increased in size and their trackage has become quite complex, a point may have been reached where it becomes an unreasonable burden upon the carrier to require delivery of the property in the cars at any point on the tracks within the industry. In other words, it is quite evident that the process of placing one car upon a short sidetrack serving an industry adjacent to the carrier's main line is a simpler process than the process of placing one car upon a particular unloading track in an industry which receives a hundred cars a day and which, because of its size, necessarily has a great deal of trackage for the loading and unloading of freight. But the simplicity of one single transaction as against the other affords no indication of the comparative cost to the carrier. The cost per car of delivering freight at a one-car-per-day industry having 100 feet of sidetrack very often exceeds the cost per car to the carrier of delivering freight at another industry having a great deal of trackage, but receiving twenty or one hundred or more cars per day.

In the scheme of car spotting charges proposed by the eastern lines in 1915, following what they conceived to be certain suggestions in the Industrial Railways case, 29 I. C. C. 212, tariffs were filed with the Commission which named various industries selected by reason of their complex trackage and size, and limited the service that would be performed at those industries under the line-haul rates to "delivery at a reasonably convenient point of interchange." The tariffs were suspended, upon protest of the National Traffic League and of shippers generally, and after an exhaustive investigation the Commission issued its report condemning the proposal (34 I. C. C. 611). After pointing out in its decision that—

"There may be cases in which the spots at which cars are placed for loading and unloading in complex industries are so located that the request for the receipt and delivery of carload freight at such points could not, in view of general usage, be regarded as reasonable, and where a charge for the spotting service in addition to the line-haul rate might therefore be justified. * * *"

the Commission made the definite and conclusive finding that

"The mere fact that an industry is complex or that it requires an interplant service in addition to the receipt and delivery of carload freight, is not sufficient to justify an additional charge for the placing of cars."

It is possible that such a comparison fairly made would prove the industrial track user entitled to a lower rate than those who elect to use team track deliveries.

### Allowances for Spotting When Performed by Industries

There are in eastern territory probably about 200 industries which are now receiving from the carriers allowances for performing spotting service. There are pending before the Commission a score or more of cases in which additional industries now performing spotting service demand allowances or increases in allowances. Still other industries not now receiving allowances but which perform their spotting may hereafter present formal demands to the Commission. But it is thought that the aggregate number of industries owning their own engines is small compared with the entire number of private sidetrack owners in the United States.

The carriers profess to see in the pending applications for allowances and in others hereafter expected a problem difficult of solution and which necessitates a revision of their entire terminal practice. It will be observed that the proposal laid before the League involves allowances to shippers where, at the carrier's option, simple switching is performed by the industry

for the carrier. But the plan in its entirety undoubtedly involves a reduction of the allowances now being paid to industries, reducing the amounts paid in some cases and eliminating the payments in others by reason of the limitation to a simple switching and to the uniform amount of $1.00 per car as set out in the proposed tariff.

The word "allowance" among many railroad men and some part of the shipping public carries a stigma or suggestion of preference, but not properly so. The practice of allowances for industrial switching rests on a firm foundation. The number of industries that today are doing their own work at a substantial cost, generally considerably more than the amount of any allowance they receive, is undoubtedly due to the inadequate railroad terminal development which has failed to keep pace with the growth of industries as already mentioned in this report. It is undoubtedly true that as a general proposition where shippers now do the spotting at their plants, it would cost the carriers more to perform the spotting service than the amount of the allowances now paid. This appears from reports of many cases decided by the Commission and is generally admitted by the carriers themselves.

The Committee is unable to agree with the carriers that applications for further allowances to industries performing their own spotting service present a grave problem requiring a reconsideration of the entire spotting question. The service of placing cars on private side tracks at point of loading or unloading is clearly a carrier's service; and the question of the payment of allowances where that service is performed for the carrier by the industry is of minor significance and must be disposed of in each individual case on its merits. The general propriety of such allowances is recognized in Section 15 of the Interstate Commerce Act.

**Conclusions and Recommendations**

Your committee is convinced that it will serve no good purpose for the carriers to continue this agitation at the present time. On the contrary, it will arouse the antagonism of the shippers and stifle their desire to further co-operate if the co-operation is to be on one side only.

The shipper has borne increased rates which were designed to cover increased operating expenses, including any increased cost of performing the services here under consideration. If this proposal goes through, he is most assuredly entitled to an immediate reduction of his rates, since the amount claimed is deprived of this justifying factor.

It was clearly apparent that the carriers are intent upon going through with the proposal and that our efforts to convince them of the impropriety of the move would amount to naught. Their impatience at the delay necessary to await action of the League was several times manifested.

Your committee respectfully recommends the following action:

1. That an appeal be made to the railroad executives urging them to discontinue the agitation of this question, and failing in this
2. That the League oppose the plan in every detail.
3. That this opposition be immediately announced to the carriers and the Interstate Commerce Commission.
4. That every effort be made to secure the suspension of any tariffs filed wherein this proposed plan is sought to be made effective.
5. That this opposition be before both interstate and state commissions and particularly those having the power to suspend tariffs. The state complaints to be by individual shippers or local associations rather than by the League.
6. That state and federal legislatures may be asked to make the law clear and specific as to the receipt and delivery of carload freight.
7. That the strongest possible committee be appointed to conduct this case for the League and that this committee be supplied with the necessary funds and facilities to start preparation immediately so as to be prepared to take whatever action is necessary.

## RAILWAY EARNINGS

*The Traffic World Washington Bureau*

Virtually complete reports on the earnings of Class 1 roads for the month of September received by the Bureau of Railway Economics indicate that the net railway operating income of those roads for that month amounted to $79,876,655, or approximately $29,343,000 short of what the net income should have been to enable the roads to earn 6 per cent in net railway operating income on the value of the property as fixed by the Interstate Commerce Commission, apportioning to September the part of the total annual net railway operating income that should have been earned to make 6 per cent for the entire year.

The Commission has not yet put out its statement on the earnings of the roads for the month of September, but it is not expected that the Commission's figures will differ materially from those of the Bureau of Railway Economics. The following statement on the Bureau's figures was issued November 18 by the Association of Railway Executives:

"A compilation completed today by the Bureau of Railway Economics shows that the net operating income for September of the Class 1 railroads of the country fell approximately $29,343,000 or 26.9 per cent short of the amount expected to be earned under the increased rate fixed by the Interstate Commerce Commission in accordance with the transportation act. The figure is based on reports from 207 railroads of that class having a total mileage of 237,899 miles.

"The net railway operating income for the roads for Eeptember totaled $79,876,655, a gain of only 2.8 per cent over that for the same month in 1919, despite the increased rates. It was also only approximately $4,800,000 above the standard return which the railroads would have received had they still been operating under the guarantee provided for them in the transportation act but which ended on September 1. On the basis of a return of six per cent to be earned on the tentative valuation made by the Interstate Commerce Commission for rate making purposes, their net operating income for September should have been $109,220,000.

"Total operating revenues for the 207 roads amounted to $617,162,978, or an increase of 23.7 per cent over September last year, while operating expenses were $509,013,974, or an increase of 27.2 per cent compared with the same month in 1919.

"The compilation also shows that the net operating income in every district fell below what it should have been, the biggest shortage being in the Eastern District, where it amounted to 42.3 per cent. The Southern District was next with 31.8 per cent, while the net operating income for the Western District was 9.7 per cent below the expected amount.

"Complete reports from the Eastern District show that the total operating revenues for September were $285.176,246 or an increase over those for September, 1919, of 27.8 per cent, while operating expenses totaled $244,609,072, or 30.7 per cent above those for the same month last year. This left the net operating income for that district at $27,323.483 or an increase of only 2.2 per cent over that for one year ago.

"Complete reports from the Southern District also showed the total operating revenues to be $89,559,005, or a gain of 26 per cent over September, 1919, and operating expenses at $77,352,020, which was a gain of 23.1 per cent, compared with the same period last year. Net operating income for the Southern District was $10,363,033, or an increase of 92.2 per cent over that for one year ago.

"With reports missing from three roads, the Arizona Eastern and the Copper Range railroads and the Kansas City Terminal Company, total operating revenues for the class 1 roads in the Western District were $242,427,727, or an increase of 18.5 per cent over September, 1919. Operating expenses were $187,052,882, which was an increase of 24.7 per cent, while the net operating income amounted to $42,190,139, or a decrease of 7.3 per cent.

"In accounting for the situation it is pointed out that part of the freight movement in September started prior to the effective date of the increased freight rates August 26, and also that some states have so far failed to authorize, for traffic within state lines, the same increase in freight rates already allowed by the Interstate Commerce Commission. A better test for results of the new rates will be shown by the reports for October and November. The fact that many of the roads are spending more than usual on deferred depreciation of cars, locomotives and other equipment, is also a factor the full effect of which cannot yet be measured."

## SUBORDINATE OFFICIALS

*The Traffic World Washington Bureau*

Owing to a typographical error or ommission in the issuance of its order in Ex Parte 72, involving regulations designating the classes of railroad employes that are included within the term "subordinate officials," the Commission, November 24, issued a new order to supersede the one previously issued.

In the first order, issued under date of November 1, the following paragraph with respect to train dispatchers being classed as "subordinate officials" appeared:

"Train dispatchers. This class shall include chief, assistant chief, trick, relief and extra dispatchers, who are vested with the authority of superintendent or assistant superintendent."

The phrase "excepting only chief dispatchers" was omitted and the corrected order places that phrase before the clause "who are vested substantially with the authority of superintendent or assistant superintendent." In other words, chief dispatchers having the authority of superintendent or assistant superintendent are excluded from the class of "subordinate officials."

**EXCHANGE OF BONDS**

The Long Island Railroad Company has applied to the Commission for authority to issue and deliver its refunding mortgage bonds to an amount not exceeding $3,876,000 par value in exchange bond for bond for its outstanding Unified Mortgage bonds to an amount not exceeding $3,876,000 par value.

## COMPENSATION FOR C. & A.

*The Traffic World Washington Bureau*

Annual compensation at the rate of $3,178,314.92 has been recommended for the Chicago & Alton by a compensation referee board consisting of Commissioner Meyer, Alexander Wylie and John J. Hickey, appointed by the Commission, upon the application of the railroad company. This is the amount of the average annual railway operating income during the three test years ended with June 30, 1917.

The Alton asked for $4,592,500, equal to 5.5 per cent return on an investment in property devoted to transportation of $83,500,000. That valuation, fixed by the Alton, was for the purpose of this case only and without prejudice to it in any further proceedings. The company urged that if its just compensation were based upon evidence of its earning capacity when its property was taken by the government, the amount of that compensation would be best judged by the income for the year ending June 30, 1917. The income for that year was $4,105,000. It asserted, however, that that amount should be inflated on account of excessive and abnormal charges to its operating expenses for depreciation of equipment and maintenance. The extraordinary amount for depreciation of equipment was $111,720 and for maintenance $375,000, making a total claimed earning in that year of $4,487,420. It claimed, however, the right to have a return of 5.5 per cent, bringing the total up to the larger figure of $4,592,500.

The referees were not convinced by the arguments of the Chicago & Alton that it would have continued to earn as large a net railway operating income as it had in 1917 and pointed to the fact of rapidly rising items of cost of fuel, labor and materials as indicating that it would not be able to maintain its high rate of earning in 1918 and the other year and two months of federal control. They said that they could not "perceive in the evidence any support for plaintiff's contention that the value of the use of this property at the time of the taking was in excess of plaintiff's standard return, and in reaching this conclusion we have considered fully the fact that plaintiff's annual railway operating income for the first year of the test period was substantially less than its annual railway operating income of the second and third years of the test period. The evidence in this case has demonstrated conclusively that, as to this carrier, the standard return is a full and complete measure of compensation for federal control of the properties under consideration."

## L. & N. CAR SUPPLY

*The Traffic World Washington Bureau*

Commissioners Aitchison and Potter conducted a public inquiry into the coal car supply on the Louisville & Nashville November 22, on account of the complaints that have come to the car service section of the Commission from operators whose mines are on the Lexington & Eastern branch of that system.

In effect, the proceeding was the airing of a complaint by the Consolidation Coal Company that the railroad company is not furnishing cars enough to enable it to carry out its conservation contracts to supply public utilities. Specifically it appeared that, according to the ratio between demand and supply the L. & N. should be furnishing about 65 cars for loading, but has been furnishing only about 41.

Vice-Presidents E. M. Mancourt and W. L. Andrews of the coal company told of the troubles that company has been having in filling what they claimed were the conservative contracts for coal made with public utility companies. Additional facts and statistics were furnished by R. A. Hord, secretary of the association of coal operators in that part of eastern Kentucky.

According to W. J. Haylow, superintendent of transportation, the ratings of the mines on the Lexington & Eastern total 1,065 cars, but 500 cars is about the capacity of that part of the system.

"Well, why aren't you handling this situation?" asked Commissioner Potter, who noted that the supply of cars for that division was smaller than the capacity.

"We are handling it," said Mr. Haylow. "I never heard that there was a situation until I got to Washington. The only failure to give as many cars as the division can handle is the failure of connections to give us the cars to which we are entitled."

Commissioner Aitchison questioned that assertion. He asked if the L. & N. did not refuse 200 of 400 coal cars offered to it at Atlanta during a recent drive to give the L. & N. a better supply. Mr. Haylow said that perhaps that was true during a particular period that could be picked out, but that the rejection was because the cars were in such bad order that they could not pass the M. C. B. test of condition for inter-change.

"Do you mean to say the Southern Railway tried to palm off bad order cars on the L. & N.?" asked Commissioner Aitchison.

"I don't charge anything," said Mr. Haylow. "All I say is that the 200 cars or whatever number was rejected would not pass the American Railway Association inspection rules for interchange. We must take our own bad order cars when they are tendered and I believe a large percentage of our own cars on our lines are in bad order. The pecentage of bad order cars recently was 21.3, but they are being repaired as rapidly as possible. We are taking on mechanics that are being laid off by other railroads and other industrial establishments. We are working our men long hours, as long as we think we should ask them to work."

"Are you working three shifts?" asked Mr. Aitchison. Mr. Haylow said the repair men were working only in two shifts. Mr. Aitchison figured that if the L. & N. would bestir itself just a little more it could produce the twenty odd more cars a day needed to bring the number of cars furnished by it up to its quota. The L. & N. has contended that the failure of its connections to send a steady stream of cars to junction points was the largest factor in making it impossible for it to bring up its car supply.

The inquiry into the car supply on the Lexington & Eastern branch of the Louisville & Nashville was brought about by the application of the Laclede public utility interests of St. Louis for an order directing the L. & N. to furnish twenty coal cars a day for loading with coal for public utility purposes from mines on the Lexington & Eastern.

That application was denied November 23. The inference to be drawn from the denial is that the Commission believes the Laclede people can obtain coal from mines other than those on the Lexington & Eastern with which it has contracts and that the issuance of an order in their favor would have no effect other than to deprive other utility companies now obtaining gas coal from the mines on the Lexington & Eastern of some part of the supply that is now going to them. Twenty cars a day more than the L. & N. is now furnishing, if sent to the Consolidation mines, would bring up the supply for the mines on the Lexington & Eastern to the quota for that part of the system. The inquiry conducted by Commissioners Aitchison and Potter showed that the L. & N. has an enormous percentage of bad order coal cars of its ownership and that it has rejected an enormous number of bad order cars of connecting lines, which is its legal right; also that it is working two shifts of car repair mechanics and hiring more men for that kind of work as fast as they are being let out of employment by other lines.

The Commission, however, did not set forth the facts ascertained in that inquiry, contenting itself with a formal denial of the application. There is no obligation resting on it to give reasons for denying the application. The facts, however, brought out at the investigation, it is suspected, will be reported by the mine operators who backed the application that caused the inquiry.

## SHIPPING BOARD OPERATIONS

*The Traffic World Washington Bureau*

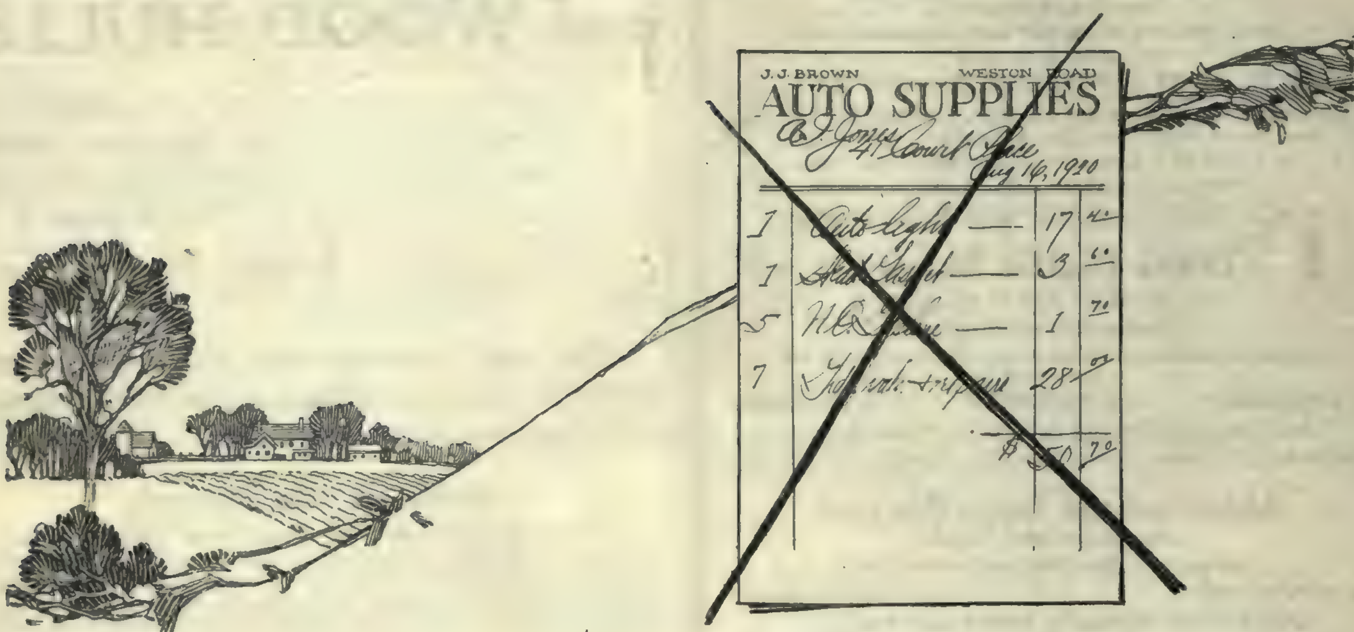
The statement as to whether the Shipping Board is making a profit or is losing money on the operation of its ships, promised some time ago by Admiral Benson, chairman of the board, will be ready in the near future, the chairman says. In this connection he said the accounting system of the board was being put on a business basis and that the board would be able to tell just where it stood with respect to the operation of any particular ship or operator.

The board's system of accounting was subjected to severe criticism by Martin J. Gillen, formerly special assistant to John Barton Payne, when the latter was chairman of the Shipping Board, before the House select committee which is holding hearings in New York on Shipping Board operations. Mr. Gillen charged that the board was unable to account for hundreds of millions of dollars. He said the board had spent $900,000,000 in the construction and operation of ships without being able to show for what the money was expended.

In the annual report of W. W. Warwick, comptroller of the United States treasury, made public November 21, reference is made to the accounting system of the United States Shipping Board Emergency Fleet Corporation. The treasury was requested by the trustees of the Emergency Fleet Corporation to audit the accounts of the corporation. Mr. Warwick sets forth a memorandum by him to the Secretary of the Treasury recommending that the request be denied.

"There can be no official audit of the Fleet Corporation's accounts by a Treasury auditor detailed for that purpose," said Mr. Warwick in the memorandum. "At best, anyone detailed or employed by the Secretary of the Treasury would be able to express only his individual opinion as to the accuracy of the figures in the accounts and as to whether or not the payments made were authorized by the officers of the corporation intrusted with the duty of giving the authorization. His opinion as to the economy and efficiency with which the financial affairs of the corporation had been administered would not be of great value. He could not at this late date know much with reference to the facts underlying the transactions. His hindsight would be better than the corporation's foresight, as it must be true that every large corporation doing an important work in a limited time will make mistakes and waste some

# Exide
## IRONCLAD
## BATTERIES




money. It would not accomplish much if it did not. The criticism now of such cases would produce no results.

"The Fleet Corporation, if it be dissatisfied with its own accomplishments in the way of auditing and controlling its financial affairs, has entire freedom in changing its system and methods, and at any time may employ additional auditors to review the work done and test it by any standards the corporation may establish for such review."

Later Congress passed an act directing the Treasury to make the audit. When this was undertaken, Mr. Warwick says, "the corporation apparently found it well-nigh hopeless to bring together the scattered supporting papers necessary to a systematized rendering of its accounts," and that no accounts were submitted in response to the request of the department until the interchange of correspondence on the subject "promised to reach an acute stage."

"These matters are recounted here, not for the purpose of criticism of the corporation, which had encountered unavoidable difficulties in bringing together a proper record of its various operations over a large field, but in order to emphasize the evil results of inadequate accounting requirements," the comptroller says in his report.

The audit of the accounts of the United States Shipping Board Emergency Fleet Corporation by the Treasury Department, covering the last three months of 1918, all of 1919 and the first two months of 1920, shows that the total disbursements audited amounted to $2,732,915,213.75. Exceptions to $1,184,326,-243.10 of that amount were taken by the Treasury auditors because of lack of supporting data. Of the total amount of exceptions, $70,625,898.30 have been cleared by the receipt of necessary data, the report shows. The total disbursements from July 1, 1918, to February 29, 1920, are given as $3,218,407,983.90.

## THE NEW SHIPPING BOARD

*The Traffic World Washington Bureau*

The belief which prevailed in Washington when President Wilson, November 13, made recess appointments to the United States Shipping Board that the nominations, when sent to the Senate, would not be confirmed, was strengthened this week by a statement from Senator Jones, chairman of the Senate commerce committee, to which the nominations will be referred, to the effect that he would oppose confirmation. Other Republican members of the committee, of which Senator Harding, president-elect, is a member, have decided also to withhold action on the nominations.

Notwithstanding the practical certainty, however, of their appointments not being confirmed, the new members of the board notified Chairman Benson that they would be on hand December 1 for the first meeting of the board. They planned to visit the offices of the Shipping Board in their respective districts before coming to Washington, the chairman said. Although Congress did not make an appropriation to cover the salaries of the new members, it is not regarded as improbable that if the recess appointees serve on the board between December 1 and March 4, Congress will provide the money for their salaries for that period.

"I was inclined to favor the confirmation of the President's appointees to the Shipping Board when the shipping act was put through last June," said Senator Jones. "I believed that it was of great importance that the act should begin operation immediately. But the President delayed naming the board for four or five months, and now he has appointed several men whom I do not consider fitted for the job. I think the best plan now is to wait until President-elect Harding takes offices and allow him to make the appointments."

# Docket of the Commission

**Note. Items in the Docket marked with an asterisk (*) are new, having been added since the last issue of The Traffic World. Cancellations and postponements announced too late to show the change in this Docket will be noted elsewhere.**

**November 29**—Salt Lake City, Utah—Before Public Utilities Commission of Utah:
**Finance Docket 36**—In the matter of the application of the Utah Terminal Ry. Co. for a certificate of public convenience and necessity to construct a line of railroad in Utah.

**November 29**—Chicago, Ill.—Examiner Archer:
**I. and S. 1224 (and first supplemental order)**—Chipboard and strawboard in Western Trunk Line territory.

**November 29**—Argument at Washington, D. C.:
**11774**—In the matter or intrastate rates, fares and charges in the state of South Carolina.

**November 29**—Galesburg, Ill.—Examiner Wagner:
**I. and S. 1232**—Coal from Illinois to Michigan.

**November 29**—Washington, D. C.—Examiner Barclay:
**11567**—The Order of United Commercial Travelers of America vs. the Pullman Co.

**November 29**—Washington, D. C.—Examiner Oberlin:
**Finance Docket 1060**—In the matter of application of Moore Haven & Clewiston Ry. Co. for authority to issue $50,000, principal amount, of first mortgage 6 per cent gold bonds.

**November 29**—Sharon, Pa.—Examiner J. E. Smith:
**11050**—Stewart Iron Co., Ltd. vs. Pa. (Western Lines) et al.
**11167**—Same vs. Pittsburgh & Lake Erie and Director General.

**November 29**—New York, N. Y.—Examiner Mullen:
* **11879**—United Paperboard Co., Inc., vs. Lake Erie & Western et al.
* **11656**—United Paperboard Co., Inc., vs. Sou. and Director General.
* **11865**—United Paperboard Co., Inc., vs. T. St. L. & W. et al.
* **11851**—United Paperboard Co., Inc., vs. C. & A. et al.

**November 30**—Chicago, Ill.—Examiner Archer:
**I. and S. 1225**—Empty beer and cereal beverage packages and bottles returned.

**November 30**—Indianapolis, Ind.—Examiner Jewell:
**I. and S. 1233**—Grain via Indianapolis from T. St. L. & W. R. R.

**December 1**—Greenville, S. C.—Examiner Gerry:
**I. and S. 1205**—Switching and absorption at Paris, S. C.

**December 1**—Indianapolis, Ind.—Examiner Jewell:
**11877**—Burns & Hancock Fire, Brick and Clay Co. vs. Director General and C. & E. I.
**11908**—Hydraulic-Press Brick Co. vs. Director General and Chicago & Eastern Illinois.
**11908 (Sub. No. 1)**—National Fire Proofing Co. vs. P. C. C. & St. L. et al.

**December 1**—Carson City, Nev.—Examiner Healy:
**11914**—In the matter of intrastate rates, fares and charges of the Sou. Pac. Co. and other carriers in the state of Nevada.

**December 1**—Texarkana, Ark.—Examiner Howell:
**11650**—Texarkana Pipe Works vs. Director General.

**December 1**—Argument at Washington, D. C.:
**10745**—National Wholesale Grocers Assn. of the U. S. vs. Alabama & Vicksburg et al.
**10745 (Sub. No. 1)**—Southern Wholesale Grocers Assn. et al. vs. Sou. et al.

**December 1**—St. Louis, Mo.—Examiner Money:
**11907**—Cotto-Waxo Co. et al. vs. Ann Arbor et al.

**December 1**—Chicago, Ill.—Examiner Archer:
* **11880**—Merchants' Coal and Coke Co. vs. P. C. C. & St. L. et al.
* **11880 (Sub. No. 1)**—Same vs. Same.

**December 1**—New York, N. Y.—Examiner Mullen:
* **11606**—John E. Murray vs. Director General.

**December 2**—Argument at Washington, D. C.:
**10826**—Intermediate Rate Assn. vs. Aberdeen & Rockfish et al.

**December 2**—Springfield, Mo.—Examiner Wagner:
**11903**—McGregor-Noe Hardware Co. vs. St. L.-S. F.
**11737**—E. M. Wilhoit Oil Co. et al. vs. Director General.

**December 2**—Kalamazoo, Mich.—Examiner J. E. Smith:
**11887**—The Upjohn Co. vs. Grand Trunk Western et al.

**December 2**—Atlanta, Ga.—Examiner Gerry:
**11869**—Empire Cotton Oil Co. vs. C. of Ga. et al.
**11870**—Empire Cotton Oil Co. vs. Alabama, Florida & Gulf et al.

**December 2**—St. Louis, Mo.—Examiner Money:
**11890**—Slogo Coal Co. vs. Mo. Pac. et al.

**December 2**—Philadelphia, Pa.—Examiner Butler:
* **11839**—E. I. Du Pont de Nemours & Co. vs. Director General.
* **11895**—Same vs. Same.

**December 2**—New York, N. Y.—Examiner Mullen:
* **11838**—Suzuki & Co. vs. Director General and Pennsylvania.
* **11755**—Raritan Copper Works vs. N. Y. O. & W. et al.

**December 3**—St. Louis, Mo.—Examiner Money:
**11835**—Merchants' Exchange of St. Louis, Mo., vs. B. & O. et al.

**December 3**—Atlanta, Ga.—Examiner Gerry:
**5504**—The Cotton Manufacturers' Assn. of South Carolina vs. Carolina, Clinchfield & Ohio Ry. of South Carolina et al.

**December 3**—Fort Worth, Tex.—Examiner Howell:
**I. and S. 1227**—Minimum weight on grain based on capacity of car ordered.

**December 3**—Argument at Washington, D. C.:
**10826**—Intermediate Rate Assn. vs. Aberdeen & Rockfish et al.

**December 3**—Ft. Wayne, Ind.—Examiner Jewell:
**11855**—The Rub-No-More Co. vs. Great Northern et al.

**December 3**—Grand Rapids, Mich.—Examiner J. E. Smith:
**11873**—Collins Northern Ice Co. vs. Director General.

**December 3**—Philadelphia, Pa.—Examiner Butler:
* **11872**—Arnhold Bros. vs. Director General.

**December 3**—New York, N. Y.—Examiner Mullen:
* **11708**—American Mfg. Co. vs. Galveston, Harrisburg & San Antonio et al.
* **11708 (Sub. No. 1)**—F. S. Smith & Son vs. Director General and Texas Mexican.
* **11913**—George C. Holt and Benjamin B. Odell, as receivers of the Ætna Explosives Co., Inc., vs. B. & O. et al.

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# The Traffic World

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## INTRASTATE RATE ADVANCES

If, after the decision of the Commission in the New York case, published last week, there remained anything that it should say in the matter of its jurisdiction over intrastate rates under the transportation act, it seems to us that it has been said by Commissioner McChord in the report on the Illinois case, published in full elsewhere in this issue.

The decision makes it clear and unmistakable that the Commission understands that it is charged by Congress to prevent undue, unreasonable, or unjust discrimination against interstate or foreign commerce and that the prohibition is not limited to particular persons or localities, but is applicable to discrimination against interstate and foreign commerce in their broad definitions.

Commissioner McChord proceeds from what the Commission's notice of its decision calls a "new angle" with respect to states' rights in this connection. "This construction of the act," he says, "can not be said to be an encroachment on states' rights. The power to regulate interstate commerce was granted Congress chiefly as a means of protection against commercial hostilities and reprisals between the various states which overwhelmed the Confederation and threatened the commercial destruction of some of the states. The existence of that exclusive power in Congress is of greater importance now than at the time of the adoption of the constitution, for the protection of the states themselves. Today railroads run the length and breadth of the country. Many of the roads traverse with their own lines a number of states. Even though a carrier's rails may be confined wholly within a state, it is ordinarily an important link in the transportation of commerce from and to other states. Each state, therefore, is vitally interested in the transportation conditions in the other. A narrow or selfish policy with respect to the transportation instrumentalities within a state may cripple or suppress the commerce of the other states. It was stated on argument that about thirty-one states had permitted the same increases in fares as we fixed in Increased Rates, 1920. Are the transportation facilities of these states and of the nation to be put in jeopardy by reason of the failure of the other states to conform to the plan adopted by the Congress for the welfare of the nation as a whole? The states gave to Congress the power to protect and promote the instrumentalities of interstate commerce and as the states' right they look to Congress to exercise that power."

That is undoubtedly a new angle so far as any former expression of the Commission is concerned, but it is not new or original in any other sense. We ourselves have made that argument repeatedly and we know of others that have made it. It was first made, so far as we recall now, by Alfred P. Thom, the distinguished railroad attorney, in a public address some years ago. He said that the right of a state was to be protected from the acts of other states. That is undoubtedly logically and historically correct, and we are glad to see the Commission announce that view. We see in it nothing that can offend or antagonize even the most bitter proponent of the doctrine of states' rights, as that doctrine should be understood. But even if it did offend some persons or was in contravention of their doctrine, it would, nevertheless, be correct and what these persons choose to consider the rights of the states in connection with railroad rates must necessarily be abolished if we are to have any sort of orderly transportation regulation.

## THE GORING OF THE OX

John E. Benton, general solicitor for the National Association of Railway and Utilities Commissioners, speaking before the Commission in the Iowa rate case, adopts rather an appealing line of argument. Assuming, for the sake of the argument, that the Commission has power to prescribe the level of passenger rates in the state of Iowa, he says: "This leaves for consideration the single question whether, in this case at this time, the Commission ought to exercise that power." He then proceeds to give reasons why the Commission, in his opinion, should not exercise its power.

We do not think his reasons good, but we do think well of the issue he raises. It is not always wise to exercise even an admitted or uncontested power. But the question we wish to ask here is why did not Mr.

Benton and his associates among the state commissioners raise that same issue with themselves when they considered refusing to ratify, intrastate, the action taken by the Commission in increasing rates under the transportation act? Taking his own line of argument, we ask him why (assuming for the sake of the argument that the state commissions have full jurisdiction over intrastate rates) was it considered wise for the states to exercise that power, in face of the demands of the transportation situation? Every consideration except (from their point of view) the preservation of their own dignity and technical jurisdiction demanded that railroad rates over the entire country, state and interstate, be raised to the level found necessary by the Interstate Commerce Commission to give the carriers the revenue Congress said they must have and that it said should be given to them by the methods used by the Commission. Was it wise for the state commissions—even assuming that they are within their legal rights—to raise the question of jurisdiction at the risk of upsetting the entire plan for putting the carriers on a proper basis?

We think Mr. Benton has asked just the proper question, only he has not applied it to himself and his associates. We disagree, probably, as to the answer. He says the Commission is wrong to exercise its jurisdiction in the present case. We say it is right. He would say, of course, that the state authorities are right in attempting to exercise the jurisdiction they claim. We say they are wrong.

## RAILROAD PASSES

In times past we have had more or less to say about the way in which free transportation is distributed among railroad men and their families. We never met with much open approval, from railroad sources, of our suggested reforms (though now and then a railroad official would admit privately that we were right) and no one else seemed much exercised about it, even when it was admitted that there should be reform. No one, that we recall, joined us in proposing that existing methods be changed, though many admitted that prevailing practices were loose and not based on business methods.

But now comes Chairman Gunnison, of the New Hamshire commission, in a letter to Chairman Clark, of the Interstate Commerce Commission, suggesting that the New England carriers may have to cure their ailing financial condition by economies rather than by increases in rates. In suggesting one such economy he says:

"It is now the custom of the railroads to grant passes to all employes, their families and dependent relatives, near and distant, to ride not only their system, but over the lines of other railroads. Lawyers also who do regular work for the railroads are granted annual passes to use at all time, whether or not traveling on railroad business.

"It seems to this commission that this custom is all wrong. No one should ride on a pass who is not traveling on business for the railroad issuing the pass. Eliminating these passes might not produce a great deal of revenue for the railroads, but it would at least be a step in the right direction and do away with an unjustifiable discriminatory practice. The fact that the statutes legalize the practice does not make it obligatory upon the railroads to follow it, nor does it make such practice fair nor just."

We do not know whether Mr. Gunnison has been thinking independently along this line or whether he got his idea from us. At any rate he expresses exactly our idea as we have voiced it many times. We do not know that such a reform would do any appreciable good in the New England situation, but it could not fail to do some good there and everywhere.

## RAILROAD CONSOLIDATIONS

The editorial foot slipped last week, the result being that it was made to appear that the transportation act provides for compulsory consolidation of the railroads into a number of large systems. The fact is that the law merely provides for voluntary consolidations under the supervision and approval of the Interstate Commerce Commission. The common error of saying that compulsory consolidations are provided for is due partly to the fact that the original Senate bill did provide for such consolidations, and partly to the language of the act as finally passed, which, on cursory reading, might give the impression that consolidations are compulsory.

It is a fact, however, that under the act the Commission has the power, if it so wishes, indirectly to compel or induce consolidations by the exercise of its authority over the establishment and divisions of joint rates. In other words, were the Commission disposed to bring about certain consolidations, it might do so by so controlling divisions of rates as to show the railroads the advisability of getting together along certain lines. It is to be hoped and expected, however, that the Commission will not use any of its powers except in legitimate and direct ways, and it is not fair to say that the law provides for compulsory consolidations merely because the Commission, by devious methods, might bring about a certain end, the accomplishment of which, by direct means, is not specifically provided for.

For the reason that the Commission has now given itself to the task of planning a scheme of railroad consolidations and because of the fact that there is so much misunderstanding as to its powers and duties, it may be well to review here the provisions of the act in this respect. It provides that the Commission shall, as soon as practicable, prepare and adopt a plan for the consolidation of the railroads of the country into a limited number of systems, preserving, as fully as possible, competition and, wherever practicable, existing routes and channels of trade and commerce. These several railroad systems are to be so arranged that the cost of transportation, as between competitive systems and as related to the value of the properties through which the service is rendered, shall be the same, as far as practicable, so that these systems may employ uniform rates in the movement of competitive traffic and, under efficient management, earn substantially the same rate of return on the value of their respective properties. When

(Continued on page 1100)

# Current Topics in Washington

**The New President's Transportation Troubles.**—It is a conviction among those who have to know, that President Harding will not have peace and quiet in the transportation end of his administration at its beginning. The mess in the Shipping Board, the vacancies in the Interstate Commerce Commission, and the litigation on account of the intrastate rate decisions, it is believed, will be only small parts of a situation with which he will have to deal, even before he finds out where the White House coal scuttle is kept. Rate wars are brewing on the seven seas. Some are already going on and others are suspected of being so near at hand that they are being treated, at some ports, as being already in existence. There is a feeliong that the incoming President will not be able to dispose of questions arising in the transportation end of the domain of public business by the simple expedient of ignoring them. President Wilson, acting through Directors-General McAdoo and Hines, was under no compulsion to give much thought to the railroads or any whatever to the ships. The tonnage offering was more than they could carry. The Treasury, too, was in fairly good condition. That is to say, while outgo was never matched by income, it was comparatively easy to presuade the banks into taking certificates of indebtedness wherewith revenues were spent before they were received. Now, however, there is competition for freight to move on both land and sea. The treasury is having great difficulty in meeting its bills and things cannot be put off, on Napoleon's theory, that questions propounded to him would answer themselves in the course of three or four weeks. While railroad car-loading is still good, the low prices of many commodities suggest a stagnation that will produce a considerable shrinkage in the volume of business for the railroads, because the public does not buy on a falling market, largely because it has not the money, and only in part because it wonders whether the bottom has been reached. It is suggested that it is easy to ignore situations while prices are rising, but that it is a different matter when they are falling. The Shipping Board and the Commission, thus far, have "stood pat" on the rates made by them. A common view is that if they hold fast to their schedules of charges, their steadfastness will have a tendency to stabilize prices by bringing up some that are too low (in comparison with war levels) and bring down some that are too high (also in comparison with war levels). Just what President Harding could do with regard to rail rates is not clear. There is nothing pending before the Commission on which he could emulate the example of President Wilson on the five per cent case. He has no control over the Commission. However, he has some control over the Shipping Board because the Board is not only a regulator of rates, but an operator of ships. On his say-so the board could get into the rate-cutting on the Atlantic and Pacific oceans and perhaps make the foreign lines that have cut rates sorry they adopted such an expedient for getting business. The fact, however, of interest, is that he will have to think about these matters, and do his thinking under more difficult terms than his predecessor had to consider.

**Anderson's Idea on Railroad Wages.**—Judge George W. Anderson, former Commissioner and part author of the federal control law, in a speech to a conference, November 29, of New England commissioners concerning the condition of carriers in that part of the country, denounced what he called the absurd scheme of paying the same scale of wages to railroad employees all over the country, regardless of living conditions, and urged revision in the "interest of the working men themselves" on the theory that the scheme cannot be made to work, any more than could a standardization of working conditions. That denunciation is believed to have been called forth by the fact that New England railroad managers are paying the same rate to a flagman, no matter where he performs his duties, and regardless of what it costs him to live. Labor leaders are inclined to flare up when it is suggested that a man's wages shall be judged, in any degree, by the cost of living where he does his work. They are inclined to ignore the fact that, in the last analysis, it is the community in which a man lives that pays him. Therefore, it is argued, the community which pays is entitled to the benefit of the low cost of living that it may impose on him. By the same sign a congested community, where living costs are high, must bear the burden of supporting railroad employees living under such conditions. Under the standards of wages established by the Railroad Administration the railroad agent in a village of 200 has become the best paid man in it. The Post Office Department pays the postmaster in small communities in accordance with the amount of business done. The rule does not work in the larger cities. If it did, postmasters in New York and other large cities would be millionaires. The amount of work, the amount of business, and cost of living are factors in the establishment of wages of postmasters. Even the letter carriers are graduated, though not so carefully. But for the political power exerted by them their grading probably would be done more scientifically. In small places the wages of telegraph operators and station agents are greater than those of bank tellers and in many places greater than those of cashiers and presidents.

**Threats of Labor Leaders.**—About the same hour Judge Anderson was talking about the wages of railroad employes, Warren S. Stone and other railroad labor leaders began talking about being tired of holding in check the men in the organizations of which they are the heads. Such talk, among the men at the Interstate Commerce Commission is regarded as a thinly veiled threat intended to scare the public and the managements of the railroads to prevent any revision of any thing. Samuel Gompers and other labor leaders are nearly always engaged in rattling the sword. The railroad brotherhood leaders suggested that the men under them would get loose and cut didoes because the Railroad Labor Board had failed to do something which the railroads claim Congress did not authorize it to do. The fact that there is a law question involved, it was suggested, made no difference to Mr. Stone. It was recalled that in the colloquy between Mr. Gompers and Representative Webster, of Spokane, the congressman could not persuade or cajole the head of the Federation of Labor to say, in the event Congress enacted the obnoxious labor sections of the transportation law, he would advise obedience to it. It is suggested, therefore, that the lack of law would not be an obstacle to Stone and his colleagues.

**Interest of Shippers in Intrastate Rate Case.**—There is a selfish shipper interest in the intrastate rate cases which has not been prominent but which possibly may make itself felt in the event that changes in prices make freight rates more of a factor than they have been. Attorneys for shippers, as a rule, have advised their clients to keep out of the fight between the state and federal rate regulators on the theory that, in the end, uniform rates will be of benefit to everybody concerned. But when business is dull, rates high, and markets exceptionally desirable, it is pointed out, that advice may be disregarded. Even the big national shippers have some markets they hold by reason of the fact that they are able to move stuff on state rates. Uniformity will place such exclusive markets in jeopardy and, it is believed, cause an urge toward intervention in behalf of the contention of the state commissioners which might not be made manifest if the condition were such that loss of one market would mean merely the dispatch of the goods to some other market and its quick absorption in the second market. In a few cases combinations of state and interstate rates are possible because the shipper takes possession of the freight at the rate-breaking point and is therefore able to avail himself of the otherwise unlawful combination.

**Senator Pomerene Optimistic.**—Senator Pomerene, of Ohio, author of the Pomerene bill of lading law, who had more to do with the framing of the transportation act than is indicated by its popular name (Esch-Cummins law) is an optimist. The difficulties carriers are having now do not make him downcast. In a talk with the writer he called attention to the fact that the country is getting more and better transportation now than it has ever had. His idea is that it will take time to iron out the difficulties that are making railroad managers and the country generally uncomfortable, and that there must be patience. Another thought is that the country will get along better if some of the radicals in the labor organizations who have been exercising more or less influence among railroad employes are eliminated. Thus far, he said, he has not seen anything leading him to believe that any serious attempt will be made at the coming session to amend the transportation law enacted at the last session. In fact, his idea is that the result thus far has been so good that further time for ironing out of the difficulties is the only thing a reasonable man would deem necessary, especially in view of the fact that the country seems to realize that it cannot do business unless it is assured of orderly and efficient transportation.

**Packers-Stockyards Divorce.**—The Department of Justice, in its latest move in its effort to divorce the five big packers from their stockyards and railroad properties, has suggested to the Supreme Court of the District of Columbia the appointment of a trustee or trustees to take the stockyards property of the big five and sell it. The suggestion is based on the fact that nine months have passed since the entry of the consent decree in which the big five agreed to get rid of their stockyard property, without the presentation of a "workable" plan whereby the divorce can be made operative. The application was made returnable on December 4. Considerable interest has been shown in the divorce proceedings by men interested in transportation because the big packers are not the only ones that own railroads and other accessorial properties. The thought is that if the government, without obtaining a judicial judgment that a law has been violated or an admission on the part of a respon-

dent that a law has been violated, can ask for the appointment of a trustee because the industry that has offended the officials has not presented what they consider a "workable" plan for a divorce, titles to property are not as secure as they were once supposed to be. The packers, in consenting to a divorce, within two years, did not admit that they had violated any law. They consented to a decree requiring them, within two years, to get rid of their stockyards and railroads. Now, at the end of nine months, the Department of Justice suggests, in effect, that the terms of the decree be modified and further proceedings be had, as if the government had obtained a decree from a court based on a holding that some law had been violated. The petition caused comment among lawyers who have not been in agreement with either Attorney-General Palmer or the Federal Trade Commission in their moves against "big business." Also men who had have to do with the regulatory work of the Interstate Commerce Commission recalled the fact that the Commission, under the Panama Canal act, issued decrees of divorce in the lake lines and Chesapeake Bay cases, which have not been of the slightest benefit to the shippers but which probably damaged the carriers that were deprived of what they contended were extensions of their lines to points reached by their competitors and which they could not reach by their own rails. Divorce of any kind of property from an organization is not a good sounding word among those who have had to do with the regulation of common carriers. The theory of the new transportation act is that consolidation is good and that the Commission should do what it can to cause the creation of larger units, instead of smaller ones. A. E. H.

## COAL PRIORITIES NO MORE

*The Traffic World Washington Bureau*

The last vestage of priorities in favor of coal for the general public was ordered removed from the books of the Commission November 27, effective at midnight of November 29, so far as revocation of Service Order No. 20 could accomplish that removal. There is left only a small priority order for coal for the navy. At the same time, by means of special permission No. 51143, the railroads were authorized, on one day's notice, to cancel the penalty reconsigning rules applicable on all freight in open top cars and coal and coke in all cars, published under authority of special permission No. 50321, prescribed as an aid to the service orders.

Coincident with the abrogation of special rules designed to bring about the loading of more coal cars and their more speedy dispatch to the points of consumption, came a report from the car service division of the American Railway Association showing an increase in the car surplus in the week ending November 15 over the preceding week. The increase was from 12,033 to 19,865, or 7,832 cars. The surplus was principally in the south and central west.

Car shortages, however, were prevalent in other parts of the country, the daily average of orders over cars supplied, being 35,356, a decrease in the daily average of 4,332 cars.

Heavier loading and greater speed contributed largely to this condition. The car service division estimated that heavier loading contributed the equivalent of 60,000 cars and faster movement the equivalent of 310,000 cars in the summer months, when operating conditions were fine and practically the same throughout the country.

In June the average daily movement of a freight car was 25 miles. In September that average had risen to 28.1 miles. In June the average load was 29 tons. In September it was 30 tons, or within 200 pounds of the best record ever made.

This revocation of the special arrangements for getting coal was expected. In fact it was foreshadowed, it was generally believed, when the service order for the benefit of New England was lifted and clearly indicated when the order for lake cargo coal was removed. Another little indication of the ideas on the subject held by the Commissioners, it is believed, was afforded by the refusal of division 5 to issue a priority order directing the Louisville & Nashville to furnish more cars for loading from mines on the eastern Kentucky division of that system. That denial of the application was based, but not avowedly, on the belief that the Laclede Gas Company could obtain coal from companies other than those the Louisville & Nashville has not been able to serve with as many cars as they desire.

During the whole of the period of priority for soft coal loading, there never was a question of car supply for anthracite loading. The only questions in connection with the movements of that kind of coal were such as arose between the coal operators and the miners as to hours and working conditions. The close connection between the mining companies and the railroads serving the mines seemed to preclude the raising of such questions as have been raised by the Kentucky operators and the Laclede Gas Company.

A review of the whole coal situation was made in a letter Chairman Clark wrote to Daniel Willard, chairman of the advisory committee of the Association of Railway Executives, as follows:

"After study of the situation and conferences, the Commission issued, on August 9, 1920, its amended special permission No. 50321, authorizing carriers to establish on less than statutory notice emergency reconsigning rules applicable on all freight in open top cars and on coal and coke in all cars. These rules were generally established shortly thereafter.

"Inasmuch as this permission was sought and issued as an emergency matter we have kept in immediate touch with the situation, anticipating the time when the emergency should have passed in such measure as to justify cancellation of measures adopted to meet the emergency. We have had this question of these emergency reconsigning rules and charges actively before us for some little time; we have had some conferences between representatives of the railroads and of the shippers with regard thereto; and we are convinced that the emergency which prompted the authorization of these rules has in large measure passed. This is evidenced by the fact that we are canceling, effective at midnight, November 29, our remaining outstanding service order No. 20.

"It is admitted by all concerned that these reconsigning rules and charges were emergency measures which ought to be abated with the passing of the emergency. These rules were established in the tariffs without an expiration date. We assume, however, that in view of the manner in which they were established our recommendation for their cancelation will be recognized by the carriers, which recognition will avoid formal complaints against them, which would certainly be filed and would perhaps be difficult to defend. I am authorized by Division 5 to recommend to the railroads generally through you that the emergency reconsigning rules and charges published by virtue of our amended special permission No. 50321 of August 9, 1920, be canceled at the earliest practicable date. To that end we are issuing our special permission No. 51143, authorizing the cancelation on not less than one day's notice of the reconsigning rules applicable on all freight in open top cars and on coal and coke in all cars which were authorized by our special permission of August 9, above referred to. This special permission will also authorize the cancelation of these rules in instances, if any, in which they were published on statutory notice and not by virtue of our special permission."

The document which set aside the last remaining service order pertaining to coal for the public, is known as an amendment to Service Order No. 20, and is as follows:

It appearing, That the emergency which caused the Commission on the 8th day of October, A. D. 1920, to make and enter its Service Order No. 20 and the amendments thereto made and entered on the 6th day of November and the 15th day of November, 1920, has been measurably relieved;

It is ordered, That the said Service Order No. 20, as amended, be, and the same is hereby, vacated and set aside effective at midnight, November 29, 1920.

It is further ordered, That copies hereof be served upon the carriers upon whom Service Order No. 20 was served and that notice hereof be given to the general public by depositing a copy of this order in the office of the secretary of this Commission.

The special permission, No. 51143, authorizing the setting aside of the special reconsignment rules that were put out to help the railroads in confining open-top cars to what was considered their most essential use, is as follows:

Ordered: That all carriers and their duly authorized agents are hereby authorized to publish and file with the Commission consecutively numbered supplements to or reissues of their tariffs, such supplements or tariffs to cancel reconsigning rules and charges applicable on all freight in open top cars and coal and coke in all cars which were regularly established under authority extended by the Commission's Special Permission No. 50321 (amended), also reconsigning rules and charges substantially similar to those authorized by Special Permission No. 50321 (amended), which were established on the statutory notice of thirty days, establishing in lieu thereof, the reconsignment rules and charges applicable prior to the publication of the rules and charges hereby authorized to be canceled, plus the increase permitted by the Commission's report of July 28, 1920, in Ex Parte 74, the said supplements or tariffs to be made effective upon not less than one day's notice to the Commission and the general public by posting and filing in the manner required by law.

This authority does not waive any of the requirements of the Commission's published rules relative to the construction and filing of tariff publications, nor any of the provisions of the Interstate Commerce Act, except as to the notice to be given.

This permission is limited strictly to its terms and does not include later supplements to or reissues of the traiffs issued or amended thereunder. It is void unless the tariffs or supplements issued thereunder are filed with the Commission within thirty days from the date hereof. Such tariffs and supplements must bear the notation "Issued on one day's notice, under special permission of the Interstate Commerce Commission, No. 51143 of November 26th, 1920.

### CHANGES IN DOCKET

Hearing in 11838, Suzuki & Company vs. Director General and Pennsylvania, assigned for December 2, at New York, was cancelled.

Hearing in 11895, assigned for Dec. 2, at Philadelphia, should not have been stricken from the docket last week.

Hearing in 11687 was incorrectly shown as postponed to Dec. 14. It should have been shown as set for Dec. 2 at Chicago.

Hearing in 11839 and 11895, assigned for December 2 at Philadelphia; postponed to date to be hereafter fixed.

Hearing in 11878, assigned for December 4 at Memphis, cancelled.

Hearing in I. and S. 1225, empty beer and cereal beverage packages and bottles returned, assigned for November 30 at Chicago, canceled.

# Decisions of Interstate Commerce Commission

## ILLINOIS RATE CASE

**CASE NO. 11703** **(59 I. C. C., 350-366)**

**IN THE MATTER OF INTRASTATE RATES WITHIN THE STATE OF ILLINOIS**

Submitted October 12, 1920. Opinion No. 6462.

Certain intrastate passenger fares of the respondent steam railroads in Illinois, lower than the corresponding interstate fares and charges authorized by the order in Ex Parte 74, Increased Rates, 1920, 58 I. C. C., 220 and 302, and maintained through action of state authority, found to be unduly preferential of intrastate passengers, unduly prejudicial to interstate passengers, and unjustly discriminatory against interstate commerce. Fares and charges prescribed which will remove such preference, prejudice, and discrimination.

McCHORD, Commissioner:

This is a proceeding under the interstate commerce act* to determine, among other things, whether the present passenger fares for intrastate travel in Illinois result in any undue or unreasonable advantage, preference or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce; and, if so, what fares or what maximum or minimum, or maximum and minimum, fares shall be prescribed to be charged to cure the situation. Similar questions relating to freight rates and other charges made by common carriers are also involved, but they are reserved for later determination, as the case has not yet been submitted as to them.

In 1907 the legislature of the state of Illinois enacted a law† providing, subject to certain qualifications, that on and after July 1 of that year it would be unlawful for any common carrier to charge for intrastate travel in that state a fare in excess of 2 cents per mile for adults and 1 cent per mile for children under 12 years of age.

Except as to commutation fares, which were lower, this basis of charge was applied until July 10, 1918. On that date the Director-General of Railroads provided by General Order No. 28 that the minimum fares, not including commutation fares, both state and interstate, throughout the country should be based on 3 cents per mile for adults and 1.5 cents per mile for children under 12 years. Commutation fares were increased 10 per cent by that order. This action, of course, superseded the state law, and the figures named became the recognized basis of charge. Later, by section 208 (a)‡ of the transportation act, 1920, Congress provided, subject to certain qualifications, that all rates, fares and charges in effect on February 29, 1920, should continue in effect until September 1, 1920.

In Ex Parte 74, Increased Rates, 1920, 58 I. C. C., 220 and 302, we authorized substantial increases in the charges for freight and passenger service of common carriers subject to our jurisdiction throughout the country, concluding that such increases would, under the existing conditions, result in rates, fares and charges "not unreasonable in the aggregate under section 1 of the act and would enable the carriers * * *, under honest, efficient and economical management and reasonable expenditures for maintenance of way, structures and equipment, to earn an aggregate annual railway operating income equal, as nearly as may be, to a return of 5½ per cent upon the aggregate value, for the purposes of this proceeding, of the railway property of such carriers held for and used in the service of transportation and ½ of 1 per cent in addition." We decided that the carriers might increase their passenger fares and charges 20 per cent, the term passenger fares including standard local or interline fares; excursion, convention and other fares for special occasions; commutation and other multiple forms of tickets; extra fares on limited trains; and club-car charges. Also, that a surcharge upon passengers in sleeping and parlor cars might be made, amounting to 50 per cent of the charge for space in such cars, such charge to be collected in connection with the charge for space and to accrue to the rail carriers. These increased charges were established by the carriers, interstate, effective August 26, 1920.

In the meantime the carriers operating in the state of Illinois had applied to the Public Utilities Commission of that state for like increases in their intrastate rates, fares and charges. In a decision rendered August 10, 1920, the Illinois commission allowed no increases in passenger fares, holding that they had no jurisdiction to authorize fares in excess of those prescribed by the statute, and that the statute, though temporarily in a state of suspense, was still in existence and would again become operative September 1, 1920. Accordingly, the commission ordered that, effective that date, the existing schedules of passenger fares for intrastate travel be canceled, the effect of which would have been the reestablishment of the statutory fares. The commission also did not authorize increases in commutation and excursion fares, and other charges for passenger travel, except excess baggage rates, on which increases of 20 per cent were authorized. Increases in the charges for freight service were authorized less than those allowed by us, but this matter, as previously indicated, will be dealt with separately.

The Illinois carriers at once applied to the United States District Court for the Northern District of Illinois, Eastern Division, for an injunction against the enforcement of the statute. The court, upon preliminary hearing, August 24, took the position that the statutory fares could probably be shown to be confiscatory, and accordingly granted an interlocutory injunction restraining the enforcement of the statute and otherwise preserving the status quo until the matter could be fully heard and the law questions determined by the court.

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*Sec. 13. (3) Whenever in any investigation under the provisions of this Act, or in any investigation instituted upon petition of the carrier concerned, which petition is hereby authorized to be filed, there shall be brought in issue any rate, fare, charge, classification, regulation or practice, made or imposed by authority of any state, or initiated by the President during the period of federal control, the Commission, before proceeding to hear and dispose of such issue, shall cause the state or states interested to be notified of the proceeding. The Commission may confer with the authorities of any state having regulatory jurisdiction over the class of persons and corporations subject to this Act with respect to the relationship between rate structures and practices of carriers subject to the jurisdiction of such state bodies and of the Commission; and to that end is authorized and empowered, under rules to be prescribed by it, and which may be modified from time to time, to hold joint hearings with any such state regulating bodies on any matters wherein the Commission is empowered to act and where the rate-making authority of a state is or may be affected by the action taken by the Commission. The Commission is also authorized to avail itself of the co-operation, services, records and facilities of such state authorities in the enforcement of any provision of this Act.

(4) Whenever in any such investigation the Commission, after full hearing, finds that any such rate, fare, charge, classification, regulation or practice causes any undue or unreasonable advantage, preference or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or any undue, unreasonable or unjust discrimination against interstate or foreign commerce, which is hereby forbidden and declared to be unlawful, it shall prescribe the rate, fare or charge, or the maximum or minimum, or maximum and minimum, thereafter to be charged, and the classification, regulation or practice thereafter to be observed in such manner as, in its judgment, will remove such advantage, preference, prejudice or discrimination. Such rates, fares, charges, classifications, regulations and practices shall be observed while in effect by the carriers parties to such proceeding affected thereby, the law of any state or the decision or order of any state authority to the contrary notwithstanding.

†Maximum Rate of Charges.—An Act to establish and regulate the maximum rate of charges for the transportation of passengers by corporations or companies operating or controlling railroads in part or in whole in this state, and to provide penalties for the violation of the provisions thereof, and repealing all acts and parts of acts in conflict herewith. (Approved May 27, 1907. In force July 1, 1907; L. 1907, p. 476.)

233. Maximum Rate Per Mile.—(1) That it shall hereafter be unlawful for any corporation or company engaged in the carriage of passengers upon any railroad between points in this state, to charge in excess of two (2) cents per mile for the carriage of adult passenger where any passenger has purchased a ticket entitling him to carriage, or in excess of one (1) cent per mile for the carriage of a passenger under twelve (12) years of age where such passenger has purchased a ticket entitling him to carriage; Provided, That the charge in no case shall be less than five cents (5c), and in determining the charge fractions of less than one-half (½) mile shall be disregarded and all other fractions counted as one (1) mile. If any adult passenger shall have failed to purchase a ticket entitling him to carriage, a rate of three (3) cents per mile may be charged and collected; and if any passenger under twelve (12) years of age shall have failed to purchase a ticket entitling him to carriage a rate of one and one-half (1½) cents per mile may be charged and collected. (As amended by Act approved June 27, 1913. In force July 1, 1913. L. 1913, p. 504 (1).)

234. Penalty.—(2) For any violation of the provisions of this Act by any such corporation or company, its agent or employe, such corporation or company shall forfeit and pay to the State of Illinois a penalty of not less than twenty-five (25), nor more than one hundred (100) dollars for every such violation, to be recovered by suit brought in the name of the State of Illinois by the attorney-general of the state in any court of competent jurisdiction in any county into or through which said corporation or company runs or passes, or by the states attorney of any county through which said corporation or company runs or passes. Where such penalty is recovered in a suit brought by a state's attorney, as provided by this Act, there shall be recovered in addition thereto the sum of ten (10) dollars as compensation for said prosecuting attorney.

235. Invalidity of Section.—(3) The invalidity of any section of this Act shall not invalidate any other section thereof.

236. Repeal.—(4) All laws in conflict herewith are hereby repealed.

‡All rates, fares and charges, and all classifications, regulations and practices, in anywise changing, affecting or determining any part of the aggregate of rates, fares or charges, or the value of the service rendered, which on February 29, 1920, are in effect on the lines of carriers subject to the Interstate Commerce Act, shall continue in force and effect until thereafter changed by state or federal authority, respectively, or pursuant to authority of law; but prior to September 1, 1920, no such rate, fare, or charge shall be reduced, and no such classification, regulation or practice shall be changed in such manner as to reduce any such rate, fare or charge, unless such reduction or change is approved by the Commission.

Note.—February 29, 1920, marked the end of federal control.

Promptly after the issuance of the Illinois commission's decision the steam railroads of the state subject to our jurisdiction and the Chicago, Lake Shore & South Bend Railway Company, an interstate electric line, filed a petition under section 13 of the interstate commerce act, complaining of the action of that commission and alleging that the resulting intrastate rates, fares, and charges would be productive of undue prejudice and unjust discrimination, and asking for an investigation of the matter. We thereupon instituted this proceeding and assigned it for hearing, giving the Governor of Illinois and the Illinois commission due notice. The receiver of the Aurora, Elgin & Chicago Railroad Company, an electric line, intervened and asked that, as to its third-rail division, from Chicago to Batavia and Aurora, that company be included in any relief granted the petitioners.

All the carriers in Illinois are engaged in the handling of both state and interstate passengers and such passengers are carried on the same trains.

Evidence offered by the carriers indicates that, if the present intrastate rates are continued for one year and there is the same intrastate passenger travel during that year as in the calendar year 1919, the loss to the carriers, due to their failure to secure the 20 per cent increase in intrastate fares, will approximate $7,000,000, and if the 2-cent intrastate fare should become effective the loss would be $15,000,000.

Near the borders of the state of Illinois are such points as St. Louis and Hannibal, Mo.; Keokuk, Davenport, Muscatine, Burlington, Dubuque and Clinton, Iowa; Beloit, Janesville, Madison, and Milwaukee, Wis.; Gary, Indiana Harbor, Hammond, Whiting, La Fayette, Terre Haute and Evansville, Ind.; and Paducah, Ky. All such points are in constant competition, more or less, with cities in Illinois for population, industrial development and business growth. The record affords examples of how the lower fares in Illinois affect these localities, and also interstate travelers.

Quincy, Ill., is in keen competition with Burlington and Keokuk, Iowa. A branch line of the Chicago, Burlington & Quincy Railroad runs between Burlington and Quincy. Trains leave both points in the forenoon and return in the afternoon, carrying people from Quincy and Burlington out into the country to sell goods and also carrying the country people into Quincy and Burlington to buy goods. The time of the trains is fixed so that Quincy and Burlington are on an approximate equality as to service, but passengers to and from Quincy ride on a basis of 3 cents per mile, while those to and from Burlington pay 20 per cent more, or on a basis of 3.6 cents per mile. Danville, Ill., has a country trade coming into it from Indiana for distances of perhaps as much as 50 miles. Illinois people also come into Danville to trade. Those from Illinois pay the lower fare. Chicago competes with St. Louis, Evansville, and Paducah in doing business in interior Illinois. Passengers to and from Chicago, of course have an advantage in fares over the other points. These instances are given of record as typical. Similar situations may be found all around the borders of the state. In Illinois Classification, 55 I. C. C., 290, which was a proceeding instituted by us under section 8 of the federal control act upon request of the Director-General for advice, and which involved the question of discrimination as against Indiana and in favor of Illinois in the matter of freight rates, it appeared that Indiana jobbers were shipping, or seeking to ship, into Illinois in competition with Illinois industries, but that they were confronted with relatively higher rates than were paid by their Illinois competitors to points in the same state. With regard to the competition we said:

> Jobbers and manufacturers of many different articles at Indianapolis, Terre Haute, LaFayette, LaPorte, Fort Wayne and other points in Indiana and at Louisville, Ky., distribute in less than carloads to points in Illinois. In so doing they must sell against competitors located at Chicago, Peoria, Bloomington and other points in Illinois, and also at St. Louis, Mo., which is accorded substantially the Illinois scale of rates. To successfully meet the competition of those who enjoy the Illinois rates the Indiana shippers must in many instances absorb the differences in freight rates. Some have noticed a substantial falling off in business done by them in Illinois, although their business in other directions has increased; and the evidence strongly indicates that to a considerable extent the loss has been due to the freight rate situation. Especially is this true of the heavier and lower grade articles as to which the freight rates constitute a large proportion of the delivered value. Perhaps most of the business done by the Indiana shippers in Illinois is along the eastern border, but there is also a substantial amount done by some of them throughout the state. What we have said has particular reference to less-than-carload traffic moved at class rates. However, as to carload traffic also, some examples were cited wherein the existing rate situation operates to the disadvantage of Indiana shippers. Such instances generally arise out of commodity rates and minimum weights rather than out of differences in carload ratings and class rates.

As is commonly known, jobbers send their salesmen to visit the trade. Those in Illinois pay the lower basis of charge. That the differences referred to are injurious to those who must pay the higher fares is obvious.

Just across the river from Rock Island, Ill., is Davenport, Iowa. The total railroad and sleeping car fare from Chicago to Rock Island is $8.04 and from Chicago to Davenport $10.36. The difference of $2.32 against Davenport is not due to the slight additional haul incurred in crossing the bridge between the two cities, but is in the main the result of the failure of the Illinois authorities to permit the same basis of charge as we have fixed. Passengers for Davenport are carried in the same train and by the same railroad as those for Rock Island. The train carries one sleeping car, which runs to Rock Island, and another which goes across to Davenport. Passengers to Rock Island pay on the basis of the intrastate fare of 3 cents per mile, plus the intrastate sleeping car fare, without a surcharge, plus 8 per cent war tax; while passengers to Davenport pay on the basis of 3.6 cents per mile, plus a sleeping car fare the same as is charged to Rock Island, but with a surcharge for the sleeping car accommodations, plus the war tax of 8 per cent on the greater total fare. Except for the crossing of the bridge, as previously indicated, there is no difference in the character of the service. Until the increases in interstate fares became effective August 26 both cars were equally well patronized, but since that date passengers for Davenport ride to Rock Island and walk across the bridge. No one familiar with the conditions buys a ticket to Davenport or rides in the Davenport car unless the Rock Island car is full. Situations almost identical with that described above are found as between St. Louis, Mo., and East St. Louis, Ill., and as between Paducah, Ky., and Metropolis, Ill., and it is testified that there are other instances. Any incidental benefits that may accrue to an Illinois point, like Rock Island, by reason of having passengers leave their trains at such points rather than at the interstate point, their real destination, would be at the expense and to the detriment of that interstate point. Davenport and Rock Island are in competition with each other for local retail and perhaps some wholesale trade in Illinois, Iowa and Missouri. Moreover, by reason of these disparities intrastate passenger traffic increases and interstate passenger traffic decreases. The result is increased intrastate and decreased interstate revenues, or, otherwise expressed, based on the number of passengers carried, is equivalent to a decreased intrastate operating cost at the expense of the interstate service.

There is reason to believe that in general, measured per passenger carried, it costs more to handle the intrastate than the interstate traffic. The interstate passenger is generally a long-haul passenger, while the intrastate passenger generally goes a much shorter distance. It is testified that there is relatively the same amount of service for pick-up and delivery, for ticket sales, for accounting, etc., in connection with intrastate traffic as there is in connection with interstate traffic. In other words, the terminal costs are about the same whether the passenger is intrastate or interstate. Coaches used in interstate traffic generally are in use at night as well as in the daytime, but the coaches used for intrastate movements are usually idle during the night. Although old and second-grade coaches are often used for intrastate traffic, which tends to reduce the cost, the density of the traffic is said to be much lighter. An intrastate coach is said ordinarily to carry fewer passengers and to make much less mileage than the average interstate coach.

The record shows how the lower intrastate fares affect the revenue that should accrue from interstate traffic in another manner. Certain carriers between given points operate intrastate, while others between the same points run interstate. Competition generally compels the maintenance of the same fares via all lines. The interstate carriers must either meet the Illinois intrastate fares or lose the traffic to lines within the state. In either event the total revenue from interstate traffic is adversely affected.

The Illinois intrastate fares have the effect of otherwise reducing the earnings on interstate traffic, or rather on what would be interstate traffic if it were not for the differences in fares. Travelers destined to or coming from points outside the state find it cheaper to pay the intrasate fare within Illinois and the interstate fare beyond the border than to pay the through interstate fare. It is a common practice for travelers to buy their tickets to the state line, leave the train, immediately buy a ticket thence to destination, and then resume their journey on the same train. Technically, they break their journey, making part of it intrastate, but practically they resort to a device which defeats the through fare. This practice is likely to result in delayed trains, especially when there are a number of people taking advantage of it. In addition, it may require the carriers to provide additional employes to sell tickets or receive fares. It may result in certain border points being favored as gateways unless the carriers via other routes reduce their charges to meet the situation. It is testified that the practice has had these resuls in other states in the past. Also that the practice has made it impossible in some parts of the country to maintain reasonable interstate fares; that is, the practice became such a nuisance that the carriers found it advisable to publish through fares based upon the factors to and from state borders. Principally as a matter of general interest, an instance was cited in which the authorities of one state went so far as to require the carriers to post notices at their stations to the effect that through fares could be defeated by resorting to the device above described.

The state authorities take the position that we have no power to act with respect to intrastate rates or fares except to remove discriminations found to exist which injuriously affect persons or localities in interstate commerce. They urge that the evidence in this case does not warrant a finding that the

fares generally throughout the state subject interstate commerce to unjust discrimination within the meaning of the statute.

Section 3 of the act provides as follows:

That it shall be unlawful for any common carrier subject to the provisions of this Act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

This particular provision of the act stands unamended by the transportation act, 1920. It was this provision which gave rise to what is commonly known as the Shreveport doctrine, laid down by the Supreme Court in Houston & Texas Ry. vs. United States, 234 U. S., 342, commonly known as the Shreveport case. That case involved the validity of our order prescribing maximum reasonable rates from Shreveport, La., to points in Texas and requiring the removal of undue prejudice against Shreveport as to traffic to Texas points found to result from lower state commission-made rates from Dallas and Houston, Tex., toward Shreveport for equal distances. The Supreme Court there said, p. 350, et seq.:

It is unecessary to repeat what has frequently been said by this court with respect to the complete and paramount character of the power confided to Congress to regulate commerce among the several states. It is of the essence of this power that, where it exists, it dominates. Interstate trade was not left to be destroyed or impeded by the rivalries of local governments. The purpose was to make impossible the recurrence of the evils which had overwhelmed the Confederation and to provide the necessary basis of national unity by insuring "uniformity of regulation against conflicting and discriminating state legislation." By virtue of the comprehensive terms of the grant, the authority of Congress is at all times adequate to meet the varying exigencies that arise and to protect the national interest by securing the freedom of interstate commercial intercourse from local control. Gibbons vs. Ogden, 9 Wheat. 1, 196, 224; Brown vs. Maryland, 12 Wheat. 419, 446; County of Mobile vs. Kimball, 102 U. S., 691, 696, 697; Smith vs. Alabama, 124 U. S., 465, 473; Second Employers' Liability Cases, 223 U. S. 1, 47, 53, 54; Minnesota Rate Cases, 230 U. S. 352, 398, 399.

Congress is empowered to regulate, that is, to provide the law for the government of interstate commerce; to enact "all appropriate legislation" for its "protection and advancement" (The Daniel Ball, 10 Wall. 557, 564); to adopt measures "to promote its growth and insure its safety" (County of Mobile vs. Kimball, supra); "to foster, protect, control and restrain" (Second Employers' Liability Cases, supra). Its authority, extending to these interstate carriers as instruments of interstate commerce, necessarily embraces the right to control their operations in all matters having such a close and substantial relation to interstate traffic that the control is essential or appropriate to the security of that traffic, to the efficiency of the interstate service, and to the maintenance of conditions under which interstate commerce may be conducted upon fair terms and without molestation or hindrance. As it is competent for Congress to legislate to these ends, unquestionably it may seek their attainment by requiring that the agencies of interstate commerce shall not be used in such manner as to cripple, retard or destroy it. The fact that carriers are instruments of intrastate commerce, as well as of interstate commerce, does not derogate from the complete and paramount authority of Congress over the latter or preclude the federal power from being exerted to prevent the intrastate operations of such carriers from being made a means of injury to that which has been confided to federal care. Wherever the interstate and intrastate transaction of carriers are so related that the government of the one involves the control of the other, it is Congress, and not the state, that is entitled to prescribe the final and dominant rule, for otherwise Congress would be denied the exercise of its constitutional authority and the state, and not the nation, would be supreme within the national field. Baltimore & Ohio Railroad Company vs. Interstate Commerce Commission, 221 U. S. 612, 618; Southern Railway Company vs. United States, 222 U. S. 20, 26, 27; Second Employers' Liability Cases, supra, pp. 48, 51; Interstate Commerce Commission vs. Goodrich Transit Company, 224 U. S. 194, 205, 213; Minnesota Rate Cases, supra, p. 431; Illinois Central Railroad Company vs. Behrens, 233 U. S. 473.

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While these decisions [referring to cases cited] sustaining the federal power relate to measures adopted in the interest of the safety of persons and property, they illustrate the principle that Congress in the exercise of its paramount power may prevent the common instrumentalities of interstate and intrastate commercial intercourse from being used in their intrastate operations to the injury of interstate commerce. This is not to say that Congress possesses the authority to regulate the internal commerce of a state, as such, but that it does possess the power to foster and protect interstate commerce, and to take all measures necessary or appropriate to that end, although intrastate transactions of interstate carriers may thereby be controlled.

This principle is applicable here. We find no reason to doubt that Congress is entitled to keep the highways of interstate communication open to interstate traffic upon fair and equal terms. That an unjust discrimination in the rates of a common carrier, by which one person or locality is unduly favored as against another under substantially similar conditions of traffic, constitutes an evil is undeniable; and where this evil consists in the action of an interstate carrier in unreasonably discriminating against interstate traffic over its line, the authority of Congress to prevent it is equally clear. It is immaterial, so far as the protecting power of Congress is concerned, that the discrimination arises from intrastate rates as compared with interstate rates. The use of the instrument of interstate commerce in a discriminatory manner so as to inflict injury upon that commerce, or some part thereof, furnishes abundant ground for federal intervention. Nor can the attempted exercise of state authority alter the matter, where Congress has acted, for a state may not authorize the carrier to do that which Congress is entitled to forbid and has forbidden.

It is also to be noted—as the government has well said in its argument in support of the Commission's order—that the power to deal with the relation between the two kinds of rates, as a relation, lies exclusively with Congress. It is manifest that the state can not fix the relation of the carrier's interstate and intrastate charges without directly interfering with the former, unless it simply follows the standard set by federal authority. This question was presented with respect to the long-and-short-haul provision of the Kentucky constitution, adopted in 1891, which the court had before it in Louisville & Nashville R. R. Co. vs. Eubank, 184 U. S. 27. The state court had construed this provision as embracing a long haul, from a place outside to one within the state, and a shorter haul on the same line and in the same direction between points within the state. This court held that, so construed, the provision was invalid as being a regulation of interstate commerce because "it linked the interstate rate to the rate for the shorter haul and thus the interstate charge was directly controlled by the state law." See 230 U. S., pp. 428, 429. It is for Congress to supply the needed correction where the relation between intrastate and interstate rates presents the evil to be corrected, and this it may do completely by reason of its control over the interstate carrier in all matters having such a close and substantial relation to interstate commerce that it is necessary or appropriate to exercise the control for the effective government of that commerce.

It is also clear that, in removing the injurious discriminations against interstate traffic arising from the relation of intrastate to interstate rates, Congress is not bound to reduce the latter below what it may deem to be a proper standard fair to the carrier and to the public. Otherwise, it could prevent the injury to interstate commerce only by the sacrifice of its judgment as to interstate rates. Congress is entitled to maintain its own standard as to these rates and to forbid any discriminatory action by interstate carriers which will obstruct the freedom of movement of interstate traffic over their lines in accordance with the terms it establishes.

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Having this power, Congress could provide for its execution through the aid of a subordinate body; and we conclude that the order of the Commission now in question can not be held invalid upon the ground that it exceeded the authority which Congress could lawfully confer.

In American Express Co. vs. Caldwell, 244 U. S., 617, and Illinois Central R. R. Co. vs. Public Utilities Comm., 245 U. S., 493, the principles announced in the Shreveport Case, supra, were reaffirmed, but it was also held that in each such case our order must have a definite field of operation and not leave uncertain the territory or points to which it applies.

The state authorities contend that paragraph 4, section 13, of the act is merely a restatement of the effect of section 3 of the act as interpreted by the Supreme Court in the Shreveport case, supra. The provision in question reiterates in effect what is stated in section 3, but in it Congress has gone further than declaring that there shall be no undue or unreasonable advantage, preference, or prejudice as between persons and localities, as in section 3, and has forbidden and declared unlawful "any undue, unreasonable, or unjust discrimination against interstate or foreign commerce." The term "commerce" covers the entire field of transportation—the traffic itself and all the instrumentalities and means of carrying it on. The language used is certainly broad enough to cover every discrimination growing out of the relation between intrastate and interstate commerce which injuriously affects the latter.

Legislatures do not enact laws for the purpose of construing a previous act unless a construction has been placed upon the prior act which was not intended by the legislature. There is certainly nothing in paragraph 4 of section 13 which indicates any purpose of construing section 3 of the act.

The Supreme Court, in the Minnesota Rate Cases, 230 U. S., 352, recognized the power of the federal government to supervise the rates of intrastate commerce when they are so intermingled with interstate commerce on roads engaged in both that in the interest of interstate commerce such regulation becomes necessary. In that case the court said, page 432:

The interblending of operations in the conduct of interstate and local business by interstate carriers is strongly pressed upon our attention. It is urged that the same right-of-way, terminals, rails, bridges and stations are provided for both classes of traffic; that the proportion of each sort of business varies from year to year and, indeed, from day to day; that no division of the plant, no apportionment of it between interstate and local traffic, can be made to-day, which will hold to-morrow; that terminals, facilities and connections in one state aid the carrier's entire business and are an element of value with respect to the whole property and the business in other states; that securities are issued against the entire line of the carrier and can not be divided by states; that tariffs should be made with a view to all the traffic of the road and should be fair as between through and short-haul business; and that, in substance, no regulation of rates can be just which does not take into consideration the whole field of the carrier's operation, irrespective of state lines. The force of these contentions is emphasized in these cases, and in others of like nature, by the extreme difficulty and intricacy of the calculations which must be made in the effort to establish a segregation of intrastate business for the purpose of determining the return to which the carrier is properly entitled therefrom.

But these considerations are for the practical judgment of Congress in determining the extent of the regulation necessary under existing conditions of transportation to conserve and promote the interests of interstate commerce. If the situation has become such, by reason of the interblending of the interstate and intrastate operations of interstate carriers, that adequate regulation of their interstate rates cannot be maintained without imposing requirements with respect to their intrastate rates which substantially affect the former, it is for Congress to determine, within the limits of its constitutional auhority over interstate commerce and its instruments the measure of the regulation it should supply. It is the function of this court to interpret and apply the law already enacted, but not under the guise of construction to provide a more comprehensive scheme of regulation than Congress has decided upon. Nor, in the absence of federal action, may we deny effect to the laws of the state enacted within the field which it is entitled to occupy until its authority is limited through the exertion by Congress of its paramount constitutional power.

From the debates, committee reports and the act itself, Congress evidently concluded that a crisis threatened the transportation of the country. Notwithstanding the constant efforts of the railroad administration to improve conditions, and because of the mounting cost of operation, the excess of operating ex-

penses over revenues during the period of federal control and after was steadily increasing, resulting in great losses to the government. The primary purpose of Congress was to return the roads to private ownership surrounded by such safeguards as would assure the people of the whole country adequate service. To rehabilitate the railroads so that they might perform the duties necessary to the very life of the nation Congress determined upon a definite plan. It extended the guaranty period for six months beyond the termination of federal control. It directed us to initiate, modify, establish or adjust rates so that carriers as a whole (or as a whole in each of such rate groups or territories as we may from time to time designate) will, under honest, efficient and economical management and reasonable expenditures for maintenance of way, structures and equipment, earn an aggregate annual net railway operating income equal as nearly as may be to a fair return upon the aggregate value of the railway property of such carriers held for and used in the service of transportation. It provided that in determining the fair return to the carrier we "shall give due consideration, among other things, to the transportation needs of the country and the necessity * * * of enlarging such facilities in order to provide the people of the United States with adequate transportation." It directed us to take as such fair return for two years beginning March 1, 1920, a sum equal to 5½ per cent of the aggregate value of the carriers' property, and authorized us, in our discretion, to add thereto a sum equal to ½ of 1 per cent of such value to make provision for improvements, betterments or equipment.

The terms of the act are sufficiently broad to forbid unjust discrimination against interstate commerce without reference to particular persons or localities. Considering the conditions existing at the time of the passage of the act, the purpose of the act to correct those conditions, and the legislative scheme adopted by Congress to carry out that purpose, we have no doubt that Congress meant to give full import to the language used, and that the prohibition against "undue, unreasonable, or unjust discrimination against interstate or foreign commerce" is not limited to particular persons or localities, but is applicable to such discrimination against interstate or foreign commerce in their broad definitions.

This construction of the act cannot be said to be an encroachment on states' rights. The power to regulate interstate commerce was granted Congress chiefly as a means of protection against commercial hostilities and reprisals between the various states which overwhelmed the Confederation and threatened the commercial destruction of some of the states. The existence of that exclusive power in Congress is of greater importance now than at the time of the adoption of the constitution, for the protection of the states themselves. Today railroads run the length and breadth of the country. Many of the roads traverse with their own lines a number of states. Even though a carrier's rails may be confined wholly within a state, it is ordinarily an important link in the transportation of commerce from and to other states. Each state, therefore, is vitally interested in the transportation conditions in the other. A narrow or selfish policy with respect to the transportation instrumentalities within a state may cripple or suppress the commerce of the other states. It was stated on argument that about 31 states had permitted the same increases in fares as we fixed in Increased Rates, 1920, supra. Are the transportation facilities of these states and of the nation to be put in jeopardy by reason of the failure of the other states to conform to the plan adopted by the Congress for the welfare of the nation as a whole? The states gave to Congress the power to protect and promote the instrumentalities of interstate commerce and as the states' right they look to Congress to exercise that power.

In our decision in Increased Rates, 1920, we fixed the increases in rates, fares and charges necessary to comply with the act. It must be remembered that in fixing those increases we were acting within our power "to prescribe just and reasonable rates." The resulting rates therefore become, in effect, what Congress has deemed on the whole necessary to yield the carriers the prescribed return on the value of their property.

It is further urged that in Increased Rates, 1920, we did not find the value of any railroad property in the state of Illinois or elsewhere in the eastern or western groups as designated in that report. We were directed to prescribe rates so that in the aggregate they would yield a certain return, as nearly as may be, "upon the aggregate value of the railway property of such carriers held for and used in the service of transportation." We understand the interstate commerce act to require us to determine upon a valuation for the total property of the carriers and not for the property that might by some necessarily arbitrary method or formula be assigned to interstate traffic, and that is the course we followed in arriving at the estimated value used in Increased Rates, 1920.

In that case, conformably to the act, in the exercise of our power to prescribe just and reasonable rates, we determined the increased fares that were necessary in order that the passenger traffic should contribute its proper proportion to a fair return on the aggregate property value. If, without good reason, the fares within a state are lower than those authorized and established for interstate application, intrastate passenger traffic will not contribute its just share to the passenger revenues of the carriers, and the carriers may not earn the statutory return without further increases in the transportation charges on other traffic, including interstate commerce, thus unjustly discriminating against such commerce. Such a situation will also result, as the record discloses, in depleting the revenues from interstate commerce by diverting to intrastate channels what otherwise would form part of interstate passenger traffic. Thus, the existence, side by side with interstate fares, of intrastate fares fixed at a lower level constitutes an obstruction to interstate commerce, thereby unduly, unreasonably and unjustly discriminating against such commerce, in contravention of the act.

In Increased Rates, 1920, p. 254, in approving freight rate increases of electric lines equal to those approved for trunk lines in the same territory, we said that this was "not to be construed as an expression of disapproval of increases, made or proposed in the regular manner, in the passenger fares of electric lines." There was, however, no approval of increases in such fares. Of the two electric lines hereinbefore mentioned, the Chicago, Lake Shore & South Bend appears to have taken the 20 per cent increase in its interstate fares; but, no such increase having been approved, none of the electric lines is included in our findings herein. Also, our findings herein, otherwise than as to the surcharges hereinafter mentioned, will relate only to the standard local and interline fares, exclusive of excursion, convention and other fares for special occasions, commutation and other multiple forms of tickets, extra fares on limited trains, and club-car charges. The excluded fares and charges will be reserved for further consideration.

We find that there are no conditions within Illinois justifying the maintenance of lower intrastate passenger fares therein than the fares applicable to the interstate transportation of passengers to, from or through the state; and that the maintenance of such intrastate fares lower than the just and reasonable interstate fares and charges established by the carriers pursuant to Ex Parte 74 gives an undue preference and advantage to persons traveling in intrastate commerce in Illinois and subjects persons traveling in interstate commerce to, from or through the state to undue prejudice and disadvantage, and unjustly discriminates against interstate commerce; which undue prejudice and unjust discrimination should be removed.

We are of opinion and further find that, to remove the undue prejudice and unjust discrimination found to exist, the present fares for the intrastate transportation of passengers in Illinois should be increased in amounts which shall correspond with the increases heretofore made as aforesaid in interstate passenger fares; and that surcharges upon the contemporaneous charges for space occupied by passengers traveling in intrastate commerce in sleeping cars and parlor cars in Illinois, amounting to 50 per cent of such charges, should be established, such surcharges to accrue to the rail lines.

An order in accordance with the foregoing findings and conclusions will be entered.

Eastman, commissioner, dissents.

### Order

This case being a proceeding instituted by the Commission upon petition filed, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

It is ordered, That the following-named carriers, parties to this proceeding * * * according as they respectively participate in the transportation, be, and they are hereby, notified and required to cease and desist from practicing the undue prejudice, undue preference and advantage, and unjust discrimination found in said report to exist, and to establish, put in force and maintain passenger fares for the transportation of passengers in intrastate commerce within the state of Illinois which shall exceed the fares of the carriers now in force and applicable to such transportation in amounts corresponding to the increases heretofore made by the carriers, now in effect, under Ex Parte 74, referred to in said report, in said carriers' passenger fares for the transportation of passengers in interstate commerce within the state of Illinois and between points in the state of Illinois and points in other states;

It is further ordered, That said carriers, according as they respectively participate in the transportation, be, and they are hereby, notified and required to cease and desist from practicing the undue prejudice, undue preference and advantage, and unjust discrimination found in said report to exist, and to establish, put in force and maintain surcharges upon the contemporaneous charges for space in sleeping cars and in parlor cars occupied by passengers traveling in intrastate commerce within the state of Illinois, such surcharges to amount to 50 per cent of the charges for such space and to accrue to the respective railroad common carriers;

It is further ordered, That this order shall become effective on or before the tenth day of January, 1921, upon notice to this

Commission and to the general public by not less than five days' filing and posting in the manner prescribed in section 6 of the interstate commerce act, and remain in force until the further order of this Commission in the premises;

And it is further ordered, That a copy of this order be served upon each of the common carriers parties to said proceeding.

## RATES ON SOYA BEAN OIL

A finding of unreasonableness and an award of reparation have been made in No. 11007, Globe Oil Mills vs. Southern Pacific et al., opinion No. 6458, 59 I. C. C. 318-9, with regard to shipments of soya bean oil in tank cars from Los Angeles to Ivorydale, O., Chicago, and New Orleans. The report also covers sub-No. 1, Same vs. Director-General, as agent and A. T. & S. F. et. al. Fifth class was imposed on the oil which moved in the latter part of 1917 and early in 1918. The rates imposed were $1.80 to Ivorydale; $1.75 to Chicago and $1.68 to New Orleans.

Reparation is to be made to the basis of 90 cents, which is the rate on soya bean oil found to be reasonable in Procter & Gamble vs. Director-General, 57 I. C. C. 42, decided February 12, 1920. In that case a rate of $1.125, established in February, 1919, was condemned as unreasonable to the extent that it exceeded a rate of 90 cents.

## RATE ON LUBRICATING OIL

An order of dismissal has been made in No. 10956, Atlantic Refining Co., vs. Chesapeake & Ohio, director general, as agent, et al., opinion No. 6457, 59 I. C. C. 316-7, holding that a rate of 27.5 cents on 100 cars of petroleum lubricating oil shipped from Cabin Creek Junction, W. Va., to Philadelphia, between June 29 and September 21, 1918, was not unreasonable or otherwise unlawful. The railroads showed that if they took all the various decisions of the Commission permitted them to take the rate would be 31.71 cents. Cabin Creek Junction is in 87 per cent territory but to enable the refiners at that point to compete with oil refiners north of the Ohio River they gave them 73 per cent of the New York-Chicago fifth class rate. In the various rate commotions caused by General Order No. 28, its modification and the fifteen per cent case, the rate finally settled to 26.5 where it remained until the disturbance caused by Ex Parte No. 74 came along. In the period in which the shipments were made the rate was 27.5 cents, which the Commission held was not unreasonable.

## RATE ON BLACK-OAK STICK BARK

A finding of unreasonableness and an award of reparation have been made in No. 10658, J. S. Young & Co., vs. Director General, Chesapeake & Ohio et al., opinion No. 6453, 59 I. C. C. 305-7, on two carloads of black-oak stick bark from Charlottesville, Va., to Shrewsbury, Pa., in March and May, 1915. A rate of 18.9 cents was applied because that was the rate on bark of "oak, chestnut, and hemlock" while a rate of 15.8 cents applied on bark of other kinds. By eliminating the comma between chestnut and oak the tarriff was made clear so that the higher rate applied on bank of "chestnut oak, and hemlock." Reparation is to be made to the basis of 15.8 cents.

## RATES ON PLATE GLASS

The Commission has dismissed No. 11102, Porter Mirror and Glass Co. vs. St. Louis-San Francisco, opinion No. 6454, 59 I. C. C. 308-11, holding that fourth class on plate glass used in making mirrors, from St. Louis, Crystal City and Valley Park, Mo., was not unreasonable. The complainant asked for a commodity rate not in excess of 59 cents, with reparation to the basis of 68.5 cents. The last mentioned rate would have been the old fourth class rate of 59 cents inflated 25 per cent under the terms of General Order No. 28, applicable most of the time during which shipments were made, namely, December, 1917, and October, 1919. In the alternative the complainant suggested a commodity rate on plate glass bearing the same relationship to fourth as the rate on window glass bears to fifth class, the last meneioned class being the one applying to window glass when there is not a commodity rate on which to ship.

Prior to the increase in Ex Parte No. 74, the rate was 85.5 cents, so the rate now is nearly double what it was when the first shipments were made. The shipments weighed about 65,000 pounds per car and were worth about $15,000 per car. It was testified that loss and damage claims were negligible.

## WISCONSIN PASSENGER FARES

**CASE NO. 11763** (59 I. C. C., 391-397)

**IN THE MATTER OF INTRASTATE PASSENGER FARES ON THE LINE OF THE CHICAGO & NORTH WESTERN RAILWAY COMPANY AND OTHER CARRIERS BETWEEN POINTS IN THE STATE OF WISCONSIN.**

Submitted Nov. 12, 1920. Opinion No. 6471.

Certain fares and charges required by state authority to be maintained by the respondents within the state of Wisconsin found to be lower than the corresponding interstate fares and charges authorized by the order in Ex parte 74, Increased Rates, 1920, 58 I. C. C., 220, and to be unduly prejudicial to interstate passengers and unjustly discriminatory against interstate commerce.

HALL, Commissioner:

In Ex Parte 74, Increased Rates, 1920, 58 I. C. C., 220, we authorized increases to be made by all steam railroads subject to our jurisdiction in the group which serves the state of Wisconsin. These increases within that group were 35 per cent in interstate freight rates; 20 per cent in interstate passenger fares and charges, excess baggage charges, and rates on milk and cream; and also a surcharge upon passengers in sleeping and parlor cars amounting to 50 per cent of the charge for space in such cars, to accrue to the rail carriers. Increased rates, fares, and charges pursuant thereto were established, effective August 26, 1920.

Prior to our decision of July 29, 1920, in Increased Rates, 1920, supra, the carriers by steam railroad operating in the state of Wisconsin had applied to the railroad commission of that state, hereinafter referred to as the Wisconsin commission, for permission to make increases in their intrastate rates, fares and charges similar to those which should be authorized by us on interstate traffic. Hearings were held by the Wisconsin commission, and all of the evidence before us in Ex Parte 74 was made part of the record before it. In so far as the applications related to charges for freight service and rates on milk and cream, they were granted, with exceptions not here material, by report and order of the Wisconsin commission dated August 16, 1920, and the increases became effective August 26, 1920, contemporaneously with the increases in interstate rates and charges. Increases in intrastate passenger fares and excess baggage charges, and the surcharge upon intrastate passengers in sleeping and parlor cars, were not allowed. A 20 per cent increase on intrastate commutation fares was also granted by the Wisconsin commission, with the proviso that such fares should not exceed the fares provided for in section 1798a of the Wisconsin statutes, hereinafter referred to. In denying increased passenger fares on intrastate traffic the Wisconsin commission said:

> The Railroad Commission of Wisconsin was created by an act of the legislature of 1905 and by that act was given jurisdiction to fix and determine reasonable passenger fares on intrastate traffic on railroads in the state of Wisconsin. It exercised this jurisdiction in 1907, fixing a cash fare rate of two and one-half cents per mile. In 1907, the legislature passed an act known as Section 1798a as follows:
>
> "No corporation operating a railroad in this state, the gross receipts of which are or exceed three thousand five hundred dollars per mile per annum, shall demand, collect or receive a greater compensation for the transportation of persons than two cents per mile; and every such corporation shall, at its ticket stations within this state on its lines of road, sell tickets at a price not to exceed two cents per mile, but no such corporation shall be compelled to accept a single fare of less than five cents."
>
> This section was applicable to all of the larger lines in Wisconsin and was observed by them until the period of federal control. During that period, all passenger fares, both interstate and intrastate, were advanced to a basis of three cents per mile, such rates becoming effective about June 10, 1918, and being in effect February 29, 1920.
>
> Since the passage of the two cent fare act, this Commission has been without jurisdiction over passenger fares on the lines specified in excess of two cents. In our opinion, we are still without such jurisdiction and cannot approve any tariffs in violation of that act.
>
> * * * * * *
>
> The sole question decided here is the jurisdiction of the Commission. The application of carriers in this respect is denied.

Thereafter certain carriers by steam railroad operating in Wisconsin filed with us a petition, later amended, on their own behalf and on behalf of all steam railroads operating in that state, for relief in accordance with the provisions of section 13 of the interstate commerce act. This proceeding, to which all railroads subject to our jurisdiction operating in the state of Wisconsin have been made parties respondent, was then instituted, on our own motion—

> to determine whether the rates, fares and charges required by authority of the state of Wisconsin to be maintained by said railroads, cause or will cause any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate commerce or foreign commerce on the other hand, or any undue, unreasonable or unjust discrimination against interstate or foreign commerce; and as to what rates, fares and charges, if any, or what maximum or minimum or maximum and minimum, shall be prescribed to be charged by the petitioners, in order to remove such advantage, preference, prejudice or discrimination, if any, as may be found to exist.

At the present time 3 cents per mile is the basis, initiated by the President, for intrastate passenger fares in Wisconsin, as the enforcement of the state 2-cent fare law has been temporarily restrained by an order of the United States District Court for the Eastern District of Wisconsin pending hearing on its merits of an application made by the respondent carriers seeking a permanent injunction. The interstate passenger fares in the region that includes Wisconsin are in general on a basis of 3.6 cents per mile as maximum. Evidence offered by the carriers indicates that if the present intrastate fares are continued for one year and if there is the same intrastate travel during that year as in the calendar year 1919, the direct loss

to the carriers due to their failure to secure the 20 per cent increase in intrastate fares will approximate $2,400,000, and if the 2-cent intrastate fare should become effective the loss would be approximately $6,000,000.

All of the respondents carry both state and interstate passengers on the same trains with the same service and accommodations. The state passenger, paying the lower rate, rides on the same train, in the same car, and perhaps in the same seat, with the interstate passenger who pays the higher rate. A stipulation entered into between the respondents and the Attorney-General and Railroad Commission of Wisconsin reads in part as follows:

> The parties to this stipulation agree that for the purpose of this record only it shall be considered that the operating conditions and transportation conditions are substantially the same for interstate as for intrastate passenger service, but that nothing in this stipulation shall be deemed an admission by the Attorney General of Wisconsin or the Railroad Commission of Wisconsin that the cost of intrastate passenger service that is performed within the confines of Wisconsin is either as great as or greater than the cost of interstate passenger service.

The lower Wisconsin state basis is said to affect localities outside the state. For instance, it is shown that Duluth, Minn., and Superior, Wis., which are in close proximity to each other, compete for locations of industries and for retail trade, and to some extent for wholesale trade. Passengers from Wisconsin can go to and from Superior on as basis of 0.6 cent per mile less than to and from Duluth; can entirely escape the surcharge; and can have their excess baggage transported without the additional charge of 20 per cent. The situation is said to be similar at Marinette, Wis., and Menominee, Mich.; Hurley, Wis., and Ironwood, Mich.; and at other border points.

The record contains many illustrations of the way in which the Wisconsin intrastate fares have the effect of reducing the earnings on interstate traffic, or rather on what would be interstate traffic if it were not for the differences in fares. Travelers destined to or coming from points outside the state find it cheaper to pay the intrastate fare within Wisconsin and the interstate fare beyond the border than to pay the through interstate fare. A witness for respondents testified that in the past when intrastate fares were on a lower basis than interstate fares this practice was very common and very hard to eliminate. He also testified that any condition that creates a lower level of rates intrastate than interstate can not be supported and that finally it is found necessary to reduce the interstate fares to the level of the intrastate fares.

As tending to show undue preference of or prejudice to localities, and that the through interstate fares are being defeated, respondents introduced an exhibit from which it appears that during the period August 1 to 14, 1920, inclusive, 1,367 tickets were sold from Marinette, Wis., to 12 stations in Wisconsin on the Chicago & North Western, while during the same period in September 2,021 tickets were sold, an increase of 47.7 per cent. During the same periods 479 and 357 tickets, respectively, were sold from Menominee, Mich., to the same stations, a decrease of 25.4 per cent. Marinette and Menominee are on opposite sides of the Menominee River. From Hurley, Wis., to 10 stations in Wisconsin on the Chicago & North Western, 713 tickets were sold during the period August 1 to 14, 1920, inclusive, and 964 during the corresponding period in September, an increase of 35.2 per cent. From Ironwood, Mich., a point directly opposite Hurley, to the same stations, 953 tickets were sold during the August period and 601 during the September period, a decrease of 36.9 per cent. During the period August 1 to 21, 1920, inclusive, the tickets sold and cash fares collected between Ashland, Wis., and Duluth, Minn., and between Ashland and Superior, Wis., were 1,624 and 842, respectively. During the same period in September the figures were 1,280 and 1,152, respectively.

A direct result of the practice of buying passenger tickets again at or near state lines, thereby defeating the through interstate fares, is to convert, so far as the revenues of the carriers are concerned, interstate commerce into intrastate commerce. It also results, where there are two or more routes between two given points, in passengers using the route which has the longest mileage within the state carrying the lower intrastate fare. For example, a passenger from Milwaukee to St. Paul on the Chicago & North Western can purchase an intrastate ticket to Hudson, Wis., for $9.14 and an interstate ticket from Hudson to St. Paul for 70 cents, a total of $9.84. The passenger on the Chicago, Milwaukee & St. Paul who desires to pursue a like practice will purchase an intrastate ticket to La Crosse, Wis., for $5.91, and an interstate ticket from La Crosse to St. Paul for $4.77, a total of $10.68, or 84 cents higher than the combination via the Chicago & North Western. The through interstate fare from Milwaukee to St. Paul via both routes is $11.67.

What has been said with respect to passenger fares applies in like manner to the surcharge upon passengers in sleeping and parlor cars.

Inasmuch as the excess-baggage charges are arranged upon a scale bearing a fixed relationship to passenger fares and correspondingly graded in amount, such charges are governed by the passenger fares, and any discrimination in passenger fares necessarily entails a like discrimination in excess-baggage charges.

There is little or no evidence in the record as to the relationship of intrastate and interstate commutation or other multiple forms of tickets, excursion, convention, or other fares for special occasions, or club-car charges, and no finding will be made with respect thereto.

We deem it unnecessary to dwell upon the contentions of the state authorities or of respondents for, in the main, they are the same as those considered by us in Rates, Fares and Charges of N. Y. C. R. R. Co., 59 I. C. C., 290, and Intrastate Rates Within Illinois, 59 I. C. C., 350.

The attorney-general of Wisconsin and the Wisconsin commission, in effect, adopt the brief filed in the New York case on behalf of the various state commissions.

As stated before, the present basis of intrastate fares in Wisconsin is that of 3 cents per mile initiated by the President through General Order No. 28 of the Director General of Railroads, effective June 10, 1918. At that time, and until the increase of 20 per cent in interstate fares authorized by our report in Increased Rates, 1920, supra, became effective on August 26, 1920, the basis of both intrastate and interstate fares was the same. The reasons for increase in interstate fares are set forth in our report last cited. They included the wage award then recently made by the Labor Board. The Wisconsin commission declares that it has no power to grant any increase. The record upon which we based our report and order in Increased Rates, 1920, supra, is a part of the record in this proceeding.

Following the New York and Illinois cases, and upon this record, subject to the exception above noted in respect to commutation or other multiple forms of tickets, excursion, convention or other fares for special occasions, and club-car charges, we are of opinion and find that the increases made by the respondent steam railroads under Ex Parte 74, relating to passenger fares and baggage charges, and now in effect, result in reasonable passenger fares and excess-baggage charges for interstate transportation within the group considered in this proceeding, and that the failure of said respondents to increase the standard intrastate fares and charges correspondingly within the state of Wisconsin has resulted and will result in intrastate fares and charges lower than the corresponding interstate fares and charges; in undue prejudice to persons traveling in interstate commerce within the state of Wisconsin and between points in the state of Wisconsin and points in other states; in undue preference of and advance to persons traveling intrastate in Wisconsin; and in unjust discrimination against interstate commerce.

We further find that said undue prejudice and preference and unjust discrimination can and should be removed by making increases in said intrastate passenger fares and excess-baggage charges which shall correspond with the increases heretofore made by said respondents as aforesaid in interstate passenger fares and excess-baggage charges.

We further find that the surcharges made by said respondent steam railroads under Ex Parte 74 upon passengers in sleeping and parlor cars result in reasonable charges upon passengers so traveling in interstate commerce in the group considered in this proceeding, and that the failure of said respondents to make corresponding surcharges upon passengers so traveling in intrastate commerce within the state of Wisconsin has resulted and will result in intrastate charges lower than the corresponding interstate charges; in undue prejudice to persons so traveling in interstate commerce within the state of Wisconsin and between points in the state of Wisconsin and points in other states; in undue preference of and advantage to persons so traveling intrastate in Wisconsin; and in unjust discrimination against interstate commerce.

We further find that said undue prejudice and preference and unjust discrimination can and should be removed by making surcharges upon passengers so traveling in intrastate commerce which shall correspond with the surcharges heretofore made as aforesaid upon passengers so traveling in interstate commerce.

We further find that, whether the aforesaid passenger fares, excess-baggage charges or surcharges pertain to transportation in interstate commerce or to transportation in intrastate commerce, the transportation services in each instance are performed by the carriers under substantially similar circumstances and conditions. Tariffs may be made effective on not less than five days' notice.

These findings are without prejudice to the right of the authorities of the state of Wisconsin or of any other party in interest to apply in the proper manner for a modification of our findings and order as to any specified intrastate fares or charges on the ground that the latter are not related to the interstate fares or charges in such a way as to contravene the provisions of the interstate commerce act.

An appropriate order will be entered.

EASTMAN, Commission, dissents.

### Order

It is ordered, That the carriers by steam railroad parties to this proceeding, namely, . . . according as they respectively participate in the transportation be, and they are hereby, noti-

fied and required to cease and desist from practicing the undue prejudice, undue preference and advantage, and unjust discrimination, found in said report to exist in the relation of interstate and intrastate passenger fares and excess-baggage charges, and to establish, put in force, and maintain passenger fares and excess-baggage charges for the transportation of passengers and their baggage in intrastate commerce within the state of Wisconsin which shall exceed the fares and charges of said carriers now in force and applicable to such transportation in amounts coresponding with the increases heretofore made by said carriers and now in effect under Ex Parte 74, referred to in said report, in said carriers' passenger fares and excess-baggage charges for the transportation of passengers and their baggage in interstate commerce within the state of Wisconsin and between points in the state of Wisconsin and points in other states;

It is further ordered, That said carriers, according as they respectively participate in the transportation be, and they are hereby, notified and required to cease and desist from practicing the undue prejudice, undue preference and advantage, and unjust discrimination found in said report to exist in the relation of interstate and intrastate charges upon passengers traveling in sleeping cars and in parlor cars, and to establish, put in force, and maintain surcharges upon passengers traveling in sleeping cars and in parlor cars in intrastate commerce within the state of Wisconsin which shall correspond with the surcharges heretofore made by said carriers and now in effect under Ex Parte 74, upon passengers traveling in interstate commerce within the state of Wisconsin and between points in the state of Wisconsin and points in other states.

It is further ordered, That this order shall take effect on or before January 15, 1921, upon notice to this Commission and to the general public by not less than five days' filing and posting in the manner prescribed in section 6 of the interstate commerce act, and remain in force until the further order of the Commission.

## READJUSTMENT IN PACIFIC NORTHWEST

A readjustment of class and commodity rates in the Pacific Northwest will have to be made as a result of the Commission's decision in No. 10448, Inland Empire Shippers' League vs. Director-General, Oregon-Washington Railroad & Navigation Company et al., opinion No. 6460, 59 I. C. C. 321-45. The report also covers No. 10698, Public Service Commission of Oregon vs. Same; and No. 10458, Commission of Public Docks of Portland et al. vs. Same. Technically, the main complaint was dismissed, but the effect of the decisions on the whole line of cases will be to force the readjustment before mentioned.

The primary object of the series of cases, brought by Portland and allied interests, was to bring a readjustment of class and commodity rates from the Columbia River basin to Portland and Vancouver to a basis lower than the class and commodity rates from the same points of origin to Seattle, Tacoma and other ports in the Puget Sound country. Portland demanded such an adjustment on the ground of the easier haul, the rail lines serving that city being on water grade levels, while the rails leading to the Puget Sound communities climb the Cascade range. In some instances, the distances to Portland are less than the distances to the Puget Sound destinations. As to them, Portland's claim was based on the two factors, distance and economy of operation.

The Commission, speaking through Commissioner Eastman, with Commissioner Aitchison not participating, because, as a state commissioner, he had helped make the adjustment under attack, or had tried to change it, held that the rates on classes and commodities between Portland and Vancouver, on the one hand, and points in the Columbia River basin south of the Snake River, on the other, were unduly prejudicial to the extent that they were more than ninety per cent of the rates now in effect, which are the same as the rates to the Puget Sound destinations.

As to rates on grain and grain products from points in Idaho, eastern Washington and eastern Oregon to Portland and Astoria, Ore., and intermediate points, and to Vancouver, Wash., and rates on classes and commodities between Portland and Vancouver, on the one hand, and points in the Columbia River basin, as defined in the report, the Commission said it had not found them unreasonable.

No order was made in the case. The carriers, however, are expected to make the readjustment which will give Portland and Vancouver ten per cent under the Puget Sound cities operative within ninety days. The Commission, in making the finding of undue prejudice, limited the option of the carriers by saying that it should be removed by reducing the rates to Portland and Vancouver five per cent and increasing those to the Puget Sound destinations an equal percentage.

Rates to Astoria, on account of the 100-mile greater haul down the Columbia River, are to be left undisturbed. Astoria, a few years ago, was given the Puget Sound level, which is also the Portland level.

The effect of the decision in the cases is to give Portland the major part of her contention. Her contention was that from the whole of the Columbia River basin or inland empire, which means practically the same thing, she was entitled to an advantage over the Puget Sound ports. The Commission's decision gives her an advantage, in rates, from and to about two-thirds of the territory, in that part lying south of the Snake River.

Commissioner Eastman, in writing the report on the case, dealt with one of the most complicated rate situations in the country, arising from the fact that so much of the mileage of important railroads, and the rates applicable thereto, have been subject to the orders of the Washington and Oregon commissions, complicated by the further fact that the Columbia River is navigable, and still farther by the fact that the northern transcontinental lines in that part of the country meet the competition of the southern transcontinental lines, particularly that of the Southern Pacific. The Oregon and Washington commissions, in their efforts to deal with the situation, often worked concurrently, if not jointly. The rates on grain and grain products, which the Eastman decision leaves undisturbed, were greatly affected by the orders of the Washington commission. Oregon followed Washington in that matter and the interstate rates had to follow the downward course. Much of the report is history, some cost of service and much about the competitive conditions.

While the tentative report of Henry Thurtell, then chief examiner, is followed closely by the report of the commissioner, one change was made in the former. Thurtell recommended differentials on the classes, beginning with 10 cents on first class and ending with 2 cents on class E. The Commission's report recommends a difference of ten per cent. Thurtell's recommendation of ten per cent on commodity rates was followed.

## SPARTANBURG CASE AFFIRMED

The original finding of the Commission in 34 I. C. C., 484, that rates from Ohio and Mississippi River crossings and points in Central Freight Association territory to Spartanburg, S. C., on traffic moving through the Ohio River crossings and Asheville, N. C., are unduly prejudicial, has been affirmed, after further hearing, in No. 6030, Spartanburg Chamber of Commerce vs. Southern Railway et al., opinion No. 6461, 59 I. C. C., 346-9.

## TELEGRAPH RATES

"The complainant not having made even a prima facie case, we decline his final suggestion to institute inquiries under our broad authority as to the reasonableness and fairness of the defendants' rates," said Commissioner Aitchison in the report of the Commission dismissing the complaint in No. 11239, Norman T. Whitaker vs. Western Union Telegraph Company, opinion No. 6451, 59 I. C. C., 286-9, embracing also No. 11239, Sub. No. 1, Norman T. Whitaker vs. Postal Telegraph-Cable Company. "The breadth of those powers suggests that they should not be used captiously or vexatiously."

The Commission held that the rates for the transmission by telegraph of the usual ten-word fast message are not unreasonable as maxima, unjustly discriminatory, or unduly prejudicial.

Commissioner Aitchison set forth in the report that the complainant, an attorney with offices in Washington, D. C., after attacking the rates on the usual ten-word fast message by telegraph from Chicago, Ill., Washington, D. C., and Boston, Mass., to certain specified points, alleged that "many, perhaps thousands, of other instances of unfair and discriminatory rates are shown by data in the possession of the Commission; and further prays for the exercise of the general jurisdiction over this class of cases, as being a matter of wide national importance.

"At the outset," Mr. Aitchison continued, "we have the contentions of the defendants that the proceedings initiated by the complainant before us are patently vexatious."

A letter sent by Mr. Whitaker to the Postal company under date of January 17, 1919, when the wire properties were under federal control, is printed in the report. It was to the effect he contemplated filing a complaint with the Commission calling for an investigation of the whole system of telegraphic charges in the United States. He included a copy of his proposed complaint and asked, "Am I not right in saying that this complaint comes at a highly embarrassing time for you?" adding that he would be "pleased to hear from you further, as you may be able to show that I am wrong and thereby save me trouble and great labor in prosecuting the case."

The Commission calls attention to the fact that the complainant was in error in assuming in the letter referred to that the law required the defendant to file with the Commission its tariff books or rates for the transmission of messages. The complainant filed his complaints on March 6, 1919. They were returned for correction, as the postmaster-general was not made a defendant, and the complainant then filed them on February 14, 1920, after federal control had ceased.

The report says further that on April 29, 1920, Mr. Whit-

aker wrote to the general attorney of the Western Union with respect to offering an invention to the company.

"It would be profitless to discuss the evidence produced by the complainant, as it wholly fails to show that any of the rates of which he has made complaint are unjust, unreasonable, unjustly discriminatory, unduly prejudicial, or otherwise in violation of law," said Commissioner Aitchison.

## INTER-MOUNTAIN CASE ARGUMENT

*The Traffic World Washington Bureau*

Nine hours of argument on No. 10826, Intermediate Rate Association vs. Director-General, Aberdeen & Rockfish et al., were heard by the Commission on December 2 and the following day. That is the case in which the inter-mountain traffic interests seek a grading of rates so that the rates at Pacific coast terminals will be higher than at Spokane, Salt Lake City, and other intermediate points.

In a way of speaking it was what might be called the final end of the "Spokane case" begun by that city before the Interstate Commerce Commission was out of its swaddling clothes, thirty odd years ago. Only since 1911, however, has the case been in a state of activity, with the intense end thereof continuing from 1916, when the Commission decided that, competition by water, between the Atlantic and Pacific coasts having disappeared, further fourth section relief should be denied the carriers by railroad.

The result of that decision was to bring the terminal rates up to the level of rates in effect in the mountain country. The present case is an effort on the part of the mountain country to force the grading of rates so that the Pacific coast terminals will bear higher transportation charges than the inter-mountain country.

Three parties, as usual in all the inter-mountain rate cases, took part in the argument—the complainants, the railroad defendants and the interveners scattered from coast to coast, except in the inter-mountain country.

At the session on the morning of December 2, J. B. Campbell, in opening for the complainants, made a general statement of the issues involved and a history of the whole matter, so as to refresh the memories of the Commissioners; H. W. Prickett of the Utah Traffic Bureau approved the proposal of Attorney Examiner W. A. Disque that the class rates be graded, but argued that his work was incomplete in that he did not advocate the same kind of treatment for the commodity rates. Leonard Way, for the Idaho public utility commission, disapproved Disque's scheme and advocated a straight out mileage plan, based on percentages of a scale from New York to Portland, Ore. George Graff, also for the Idaho commission, backed up the Way proposal. W Stoutnor, for the Utah commission, endorsed the Prickett scheme for grading both class and commodity rates.

Frank Lyon, for the Luckenbach Steamship Company, was assigned to follow the inter-mountain people, but an engagement elsewhere at the time when he was to speak made it necessary to arrange to have him heard out of turn.

Seth Mann, for the San Francisco Chamber of Commerce and for the Portland, Ore., Association of Traffic and Transportation, presented the thought of the terminal cities, which is that, in view of the return of ships to the coast-to-coast route via the Panama canal, the coast cities are entitled to a continuance of the period of rest, especially in view of the fact that the transcontinental carriers, as he said, probably will be before the Commission in a short time, again asking for relief on account of actual competition by water. He pointed out that, when in 1915, the Commission allowed the carriers to put into effect a rate of 55 cents on iron and steel from Chicago to Pacific coast ports, there were 45 ships in the canal trade. Now there are 43 and more coming. He said the ships plying in that trade are not there merely for temporary purposes, but for permanent business.

## RAILWAY REVENUE

*The Traffic World Washington Bureau*

Reports covering 146 class I roads made to the Bureau of Railway Economics indicate that the roads did relatively better on earnings in October than in September, but did not earn enough to make 6 per cent. The increase in gross operating income, as compared with October, 1919, was 25 per cent. Expenses increased 29.4 per cent and net operating income 18.5 per cent. On this basis it is estimated that all class I roads will have a net of approximately $90,000,000 in October, or $20,000,000 less than necessary to make 6 per cent net on their valuation.

Notwithstanding the increase in rates that became effective August 26, the Class I roads of the United States, in September, 1920, had a smaller net railway operating income than in the corresponding month of 1919, according to the final summary of revenues and expenses of 187 Class I roads and 14 switching and terminal companies, with a mileage of 235,540, issued by the bureau of statistics of the Interstate Commerce Commission November 27.

The decline for the country as a whole in the net operating railway income was from $77,648,722 to $75,310,311. In a note the Commission said that to compare the earning power of the road in September, 1920, with September, 1919, it should be noted (1) that the effect of rate increases on interstate traffic (Ex Parte 74) was only partially reflected in September revenues, as during the early part of September a considerable portion of the business handled was billed in August at the old rates; (2) that the revenues of all roads for the nine months of 1920 include approximately $50,000,000 back mail pay; (3) that the corporate war taxes and organization expenses are not included in the 1919 returns; and (4) that September expenses include the current effect of the wage decision made by the United States Railroad Labor Board, as well as, in some cases, back pay resulting from said decision which was made retroactive to May 1, 1920.

The amounts of back pay adjustments included in September expenses, the Commission said, so far as reported, are: Eastern district, $1,706,348; Pocahontas district, $139,771; Southern district, $149,897; Western district, $705,348; total for the United States, $2,701,364.

The amount of war taxes included in September, 1920, was $3,465,271, and for the period March to September, 1920, $23,765,784.

With the items of back pay and war taxes eliminated, the net railway operating income for September would be shown as in excess of the income for September, 1919. Were a pro rata share of the back mail pay deducted, the income would not vary greatly from the figures shown in the Commission's summary for September, 1920.

For the United States as a whole the operating revenues increased from $498,611,917 in September, 1919, to $616,200,796 in September, 1920; expenses, from $399,904,137 to $511,482,962, and the net railway operating income fell as before set forth from $77,648,722 to $75,310,311. The operating ratio went up from 80.20 to 83.01.

In the Eastern district the operating revenue rose from $222,710,194 to $284,583,984; expenses from $186,680,484 to $244,960,457; and the net railway operating income fell from $26,774,698 to $26,110,597, while the operating ratio went up from 83.82 to 86.08.

In the Pocahontas district the operating revenue rose from $16,115,341 to $21,079,559; expenses from $12,866,804 to $16,509,741, and the net railway operating income from $2,695,716 to $4,584,180, and the ratio declined from 79.84 to 78.32.

In the Southern district the operating revenue rose from $54,903,988 to $68,226,081; expenses from $49,947,267 to $61,385,256; net railway operating income rose from $2,698,221 to $5,031,160, while the operating ratio fell from 90.97 to 89.97.

In the Western district operating revenue increased from $204,882,394 to $242,311,172; expenses from $150,409,582 to $188,627,506; while the net railway operating income decreased from $45,480,087 to $39,584,374, and the operating ratio increased from 73.41 to 77.85.

The operating revenue for the country as a whole increased from $3,780,780,145 in the first nine months of 1919 to $4,438,159,873 in the first nine months of 1920. Expenses increased from $3,207,376,487 to $4,280,433,331, causing the net railway operating income to decline from $402,344,166 to a deficit of $87,402,050. The operating ratio rose from 84.83 to 96.45.

In the Eastern district the operating revenue increased from $1,699,158,064 to $1,958,794,809; expenses from $1,485,237,201 to $2,005,851,795, and the net railway operating income declined from $140,250,755 to a deficit of $150,646,001. The operating ratio went up from 87.41 to 102.40.

In the Pocahontas district the operating revenue increased from $127,785,208 to $145,528,494; expenses from $100,570,848 to $133,398,373; net railway operating income fell from $21,864,285 to $11,158,953 and the operating ratio went up from 78.70 to 91.66.

In the Southern district the operating revenue increased from $460,353,331 to $562,032,618; expenses from $408,190,153 to $532,250,173; net railway operating income fell from $33,191,009 to $6,832,192. The operating ratio jumped from 88.67 to 94.70.

In the Western district the operating revenue rose from $1,493,483,542 to $1,771,803,952; expenses from $1,213,378,285 to $1,608,932,990; and the net railway operating income went down from $207,038,117 to $45,252,806, while the operating ratio increased from 81.24 to 90.81.

### AUTHORIZED TO ABANDON LINE

A certificate has been issued by the Commission in Finance Docket No. 56, authorizing the Atchison, Topeka & Santa Fe Railway Company and the California, Arizona & Santa Fe Railway Company to abandon a branch line of railroad in Yavapai County, Arizona, extending from a station called Henrietta to Poland, a distance of approximately 5.9 miles. The purpose of the construction of the branch in 1902 was to serve a mine and reduction mill, which have ceased operation. No industries or activities exist at any point along the branch and there are not to exceed 20 people in the region served, the Commission found. The state of Arizona has approved of the proposed abandonment, the Commission said.

# Tentative Reports of the Commission

## RATE ON MOLDING SAND

Dismissal of the complaint is recommended by Attorney-Examiner Arthur R. Mackley in a tentative report in No. 11503, Rock Products Tfaffic League vs. Chicago, Burlington & Quincy et al., on a proposed finding that a rate of $3.70 per net ton on moulding sand from Ottawa, Ill., to Chattanooga, Tenn., was not unreasonable or unduly prejudicial. The complainant attacked the rate on the ground that it exceeded a rate of $3.20 from Ottawa to Pittsburgh, Pa., Buffalo, N. Y., and other points in the same rate group. The shipments involved moved in the period from August 1, 1918, to May 29, 1920.

"The complaint seems to rest largely on the proposition that the conditions of transportation from Ottawa to Chattanooga are substantially similar to those from Ottawa to Cleveland, Buffalo and other points in the same general territory north of the Ohio river, and that the ton-mile yield to these points appropriately decreased with the increased distance would therefore represent a fair measure of the rate to Chattanooga," the report says. "The record does not warrant a finding to that effect. Upon all the facts the complaint should be dismissed."

## RATES ON ICE

On a proposed finding that rates legally applicable to the transportation of ice from and to specific points located within Western Trunk Line territory, during the periods from February 1 to March 22, 1919, and from June 1 to August 8, 1919, were unjust and unreasonable, Attorney-Examiner Charles F. Gerry, in a tentative report in No. 11467, Swift & Co. vs. Director-General, as agent, recommends that the Commission award reparation. The report also embraces No. 11540, Armour & Co. vs. Same, and No. 11642, Cudahy Packing Co. vs. Same.

The rates charged and legally applicable, the report says, were in most instances those provided for the class E rating, Western Classification; commodity rates the same as class E rates; through distance commodity rates; or combinations of distance commodity rates and class E rates.

Attorney-Examiner Gerry recommends that the Commission "find that the rates charged for the movements here considered were unreasonable to the extent they exceeded the rates established March 22, 1919, in Boyd's I. C. C. A-980, and on movements after May 31, 1919, to August 8, 1919, rates in the same amounts based on that scale."

The exact amount of reparation could not be determined on the record, the report says, and complainants should comply with rule 5 of the Rules of Practice.

## RATE ON CHIPBOARD

A legally applicable rate of 17.5 cents per 100 pounds on chipboard from Whippany, N. J., to Jersey City, N. J., the shipments having moved in the period from June to December, 1918, was unreasonable to the extent that it exceeded 15 cents, Examiner John A. McQuillan finds in a tentative report in No. 11635, United Paperboard Co., Inc., vs. Morristown & Erie et al.

The rate charged on the shipments was 15 cents, and therefore, the examiner says, they were undercharged 2.5 cents per 100 pounds, but he recommends that the Commission authorize the defendants to waive the undercharges, because the rate charged is that found reasonable, and that the complaint be dismissed.

The complainant asked reparation down to the basis of a rate of 11 cents and the establishment of that rate. The 15-cent rate found reasonable was subsequently established by the defendants. As the movement between the point of origin and destination was wholly intrastate, the examiner says, the Commission is without authority to prescribe rates for the future.

## MILK AND CREAM MINIMUM RATES

An award of reparation is recommended by Examiner A. R. Mackley in a tentative report in No. 11352, Sidney Wanzer & Sons vs. Minneapolis, St. Paul & Sault Ste. Marie et al., on a holding that minimum rates on single shipments of milk and cream in eight-gallon cans from Colgate, Duplainville, Waukesha, and Mukwonago, Wis., to Chicago, Ill., in the period from June 25, 1918, to July 19, 1918, were unreasonable.

The complainant attacked a minimum charge of 50 cents on single shipments of milk and cream applied during the period involved. Prior to June 25, 1918, the minimum charge was 25 cents and on June 25, 1918, it was increased to 50 cents under G. O. No. 28. On July 20, 1918, according to the report, the 50-cent charge was cancelled under orders from the Director-General to the effect that any minimum charge applicable on shipments of milk and cream on May 25, 1918, should be restored.

The Commission should find that the minimum charge of 50 cents during the period in question was unreasonable and award reparation of $48.61, with interest from August 1, 1918, the examiner says.

## MISROUTING OF SALT

In a tentative report on No. 11611, Mulkey Salt Company vs. Director-General, Wabash et al., Examiner E. L. Beach recommends a holding that the Wabash misrouted nine carloads of salt from Detroit to Bristol, Roanoke, Richmond, Glade Springs, Petersburg, Clifton Forge and Bluefield, Va., shipped in the latter part of 1917 and the early part of the following year, and an award of reparation for the difference between the rates that were assessed and the rates applicable over the cheapest routes.

The billing showed the routes and the rates. They did not agree. The Wabash followed the routing instructions, but made no inquiry as to whether the routing or the rate instructions should be followed. Beach proposes that the Commission say that in numerous cases and conference rulings it has held that when both the rate and route are inserted by the shipper in the bill of lading and they do not coincide, it is the duty of the initial carrier's agent to ascertain from the shipper, before forwarding the shipments whether he desires the instructions as to the rate or the route shall govern.

In this case the rates inserted in the bills were not applicable over the routes shown in them. There were no commodity rates in effect over the routes specified in the billing. Class rates were assessed and collected. The commodity rates inserted in the billing applied over other routes, but the agent did not inquire, hence the recommendation that the Wabash be held to have misrouted the shipments and that it be required to return the difference.

A prayer for reasonable rates for the future, over the routes of movement was made, but it was abandoned at the hearing.

### COPRA OIL IN TANK CARS

Examiner C. M. Bardwell, in a tentative report on No. 11336, Rolling Fork Oil Company vs. Illinois Central et al., recommends a holding that the rates on copra oil, in tank cars, from Rolling Fork, Miss., to Chicago and from Rolling Fork to New Orleans, in the fall of 1918, were unreasonable to the extent that they exceeded the contemporaneous rates on cottonseed oil. He recommended reparation to that basis. The report also covers No. 11337, Same vs. Yazoo & Mississippi Valley et al.

### RATE ON CLEAN RICE

In a tentative report on No. 11464, Beaumont Chamber of Commerce vs. Louisiana Western et al., Examiner E. L. Gaddess recommended a holding that a rate of 25 cents on clean rice from Lake Charles and from Gueydan, La., to Beaumont, Tex., was unreasonable to the extent that it exceeded 13.5 cents from Lake Charles and 17.5 cents from Gueydan and that reparation be made to the basis of those rates.

## COAL PRODUCTION REPORT

*The Traffic World Washington Bureau*

The total output of soft coal in the week ending November 20 amounted to 11,770,000 net tons (estimated), 371,000 short of the preceding week, which included a holiday (Armistice Day), according to the weekly report of the Geological Survey, Department of the Interior, under date of November 27. The cause of the depression is not clear, the report says.

The Lake shipments rose to 711,844 tons, 680,840 being cargo and 31,004 vessel fuel. This represented an increase of 42,894 tons over the preceding week.

Total dumpings over tidewater piers amounted to 1,141,000 net tons or 16,000 tons less than the preceding week. Of the total, 169,000 tons moved to New England, 532,000 tons were exported, 189,000 tons went for bunker use, 78,000 for the inside capes and the remainder for other tonnage. In the preceding week the total was 1,157,000 net tons.

The rail movement to New England totaled 4,469 cars as against 4,773 in the preceding week.

The total output of coal for the week ending November 13 was 12,141,000 (revised) net tons. The Survey stated that had it not been for partial observances of Armistice Day a new record for the year probably would have been established.

# INTRASTATE RATE ADVANCES

*The Traffic World Washington Bureau*

So far as any one connected with the Commission is able to figure, the Commission is not likely to be drawn into the litigation growing out of its decision in the New York and Illinois passenger fare cases until a considerably more acute stage has been reached. There was an inclination to wonder why some one had not attacked the order of the Commission as being beyond its powers or on the ground that the transportation act was unconstitutional.

The form of the attacks, it is felt, does not call for any intervention by the Commission now. In New York, the state authorities have obtained injunctions from state courts, which, unless set aside, will keep the railroads from obtaining the benefit of the Commission's ruling that they are entitled to the higher rates. In Illinois, railroad officials have obtained injunctions forbidding state interference.

In New York it is figured, the burden of the next move rests on the railroads. In Illinois the fact is the other way about. The Commission will be directly interested, it is suggested, only when the question of its power is raised in such a way as to tender the question of power to the court unsullied with collateral issues as to form of tariffs, method of filing them and things like that.

The end of the existing and prospective litigation will be the creation of the issue of the power of Congress or the scope of the Commission's authority. When that stage is reached in the litigation the commission, as friend of the court, will probably have suggestions to make. Primarily, however, the interest of the states or the railroads takes precedence over the interest of the Commission. It is in the position of having issued its reports and orders in the New York and Illinois cases. The orders direct the railroads to file tariffs for application on "intrastate" traffic. In form, the order, it has been suggested, is as direct a challenge to the state commissions as could be framed, because, until the reports and orders in the New York and Illinois cases were made, the Shreveport orders were framed so as to make it appear that the rates were for application within the states so as to remove discriminations against persons or communities, and not against interstate commerce as such. They were backed with a showing of testimony that the rates to be displaced were giving those able to use them an undue advantage over certain classes of persons or communities.

In the Illinois case, the Commission's judgment that the rates in effect within the state will not yield revenue enough to meet the condition laid down in the law—that of making rates sufficient, in its judgment, to give a specified rate of return on the value of the property devoted to transportation, of the railroads as a whole or in groups arranged by the Commission—is a departure from the old form.

It is taken for granted, by officials of the Commission who will have something to do with the litigation when the state is reached calling for intervention by the Commission, that it will take some time to get the litigation to a point where the railroads will begin deriving any benefit from the decisions. That was expected. The comparative speed with which the Commission acted on the cases brought before it by the railroads is now being taken as evidence of its desire to have the question as to what Congress meant when it passed the transportation act judicially answered as quickly as possible, or to have Congress pass on the question of the interpretation made by the Commission if that interpretation did not agree with the views of that body. A court answer or an answer by Congress would dispose of the matter so far as the Commission is concerned. It never directly has helped the railroads in their fight for the placing of full control over rates in the hands of a federal body. Whatever help the railroads have received from it has been indirect, and merely the result of decisions made by the Commission in Shreveport situations.

But, when the litigation reaches the later stage, the Commission, having taken the position that Congress desired it to do what it has done, will have to lend whatever help it can to the Department of Justice in defending the orders in the various state cases. The Commission, under the rule placing all litigation under the control of the Attorney-General, will have to arrange to make its share of the fight as an assistant to the Attorney-General.

It is believed by those who are familiar with the intimate talk about the Commission on the subject of intrastate rates that, while its first decision was based on the failure of New York to increase passenger fares, milk and cream rates, and impose parlor car surcharges, the Commission will stand, in court, on the opinion written by Commissioner McChord on No. 11703, "In the Matter of Intrastate Rates Within the State of Illinois," opinion No. 6462, 59 I. C. C. 350-66, published in full elsewhere. That thought is strengthened by the fact that, for once in its life, the Commission gave out what might be called a press agent notice with regard to its work. It has handed down hundreds of opinions, but this is the first notice of that kind for many years, if not the very first one.

There have been hundreds of what the Commission calls "memorandums for the press," but they do not cover formal opinions. In respect of the latter, they, like the opinions of the Supreme Court, "speak for themselves." The commissioners have always been averse to undertaking explanations. They expect those who are interested to dig into the opinions and form their own conclusions as to what they mean, if they are not willing to stand on the language employed by the Commission.

The Illinois case, however, is an exception to the rule. Without giving the production a name of any kind, the Commission gave out what might be called a reading notice of what it had done. In that statement, whoever was speaking for the Commission, said: "The subject is dealt with from a new and interesting angle," as indicated by an appended excerpt from Mr. McChord's opinion. So far as the Commission is concerned, the angle is new.

The decision in the Illinois case, it is further believed, places before Congress more sharply than ever the proposition that if it did not intend to empower the Commission to order the elimination of lower intrastate rates, as it has done in the New York and Illinois passenger fare cases, it will be a simple matter, at the forthcoming session, to say so and thereby render unnecessary any thought of litigation.

While the fact is without significance in a body that has never shown any party bias, it is a fact, however, that Commissioner McChord is a southern Democrat, and therefore supposed to be predisposed toward anything and everything that might be suggested as tending to preserve the right of a state or of all states from encroachment by the federal power. A majority of the Commissioners are Democrats and Commissioner Eastman, the only dissenter, is not a Democrat.

Issuance of a temporary injunction by a state court in New York, forbidding the railroads to impose the fares ordered by the Commission, and of a temporary injunction by a federal court in Illinois forbidding the state officials interfering with the railroads in carrying out the orders of the Commission, gives the litigation already started a look different from what was expected when the New York decision was made public by the Commission. Immediately after that decision was made it was thought the burden of going forward in litigation would be on the states. The fact that the carriers went forward in Illinois, it is believed, shows that allowing the states to move first brought about a situation that is more perplexing than that created by what the carriers did in Illinois.

The Commission's statement about the Illinois decision is as follows:

"The interstate Commerce Commission today handed down a decision in the Illinois intrastate rates case, in which it is held that lower passenger fares for intrastate travel in Illinois than charged for interstate travel, subject interstate travelers and points outside of the state of Illinois to undue prejudice and disadvantage and constitute an unjust discrimination against interstate commerce. The carriers are ordered to increase the passenger fares within the state of Illinois 20 per cent to bring them up to the level of interstate fares and to establish the surcharge of 50 per cent on Pullman traffic prescribed by the Commission last August in the general rate case. Questions relating to freight rates, commutation and excursion fares are reserved for later determination.

"The subject is dealt with from a new and interesting angle, as indicated in the following excerpt from the report by Commissioner McChord." (Then follows an extended quotation from the report.)

The Commission has modified its order in the New York passenger fare case (No. 11623) by eliminating the words "an order made by the Commission as aforesaid in" appearing in lines 3 and 4, page 3 of the order in that case. The elimination of those words make the order read "under Ex Parte 74" instead of "under an order by the Commission as aforesaid in Ex Parte 74," and was made because there was no order setting forth the specific increases the carriers were authorized to make in Ex Parte 74.

### Argument in Minnesota Rates

The first argument in an intrastate rate case growing out of the refusal of state authorities to grant percentage increases in intrastate rates equivalent to those authorized by the Commission in Ex Parte 74 since the New York and Illinois passenger fare cases were disposed of was heard by the Commission November 27 in the Minnesota case. It was easily seen that the fact that the Commission had indicated what its position would be in the intrastate cases had taken the "pep" out of the argument and that it was a more or less of a moot question.

Henry C. Flannery, assistant attorney-general of Minnesota, appearing for that state and the state commission, said that in view of the decisions in the New York and Illinois cases, it might seem that further argument by the state authorities would be futile, but that he did not feel that would be a correct statement so far as Minnesota was concerned. The commission in that state authorized all increases asked by the carriers with the exception of those asked for passenger fares and excess baggage, the denial being based on the ground that

a state statute prohibited such action. A law passed in 1907 prescribed a maximum fare of 2 cents a mile for passenger fares.

Even though the facts in the New York and Illinois cases justified the action taken by the Commission, Mr. Flannery said, the testimony submitted in the Minnesota case would not justify such findings. He thought that if new light could be thrown on the situation as it affected Minnesota, it would not be "too late for the Commission to take a different position." He said the Minnesota legislature would meet in January and that there was no presumption that the legislature would not act favorably on the request of the carriers, just as the state commission had done as far as it was able to do within the law.

Mr. Flannery questioned the sufficiency of the testimony of the railroads to show that discrimination against interstate commerce resulted from the lower intrastate fares which are now on a 3-cent basis as the result of a federal court injunction keeping the Director-General's basis of charges in effect. He declared that the courts should pass on the question of whether the Commission has the power to make state-wide orders such as it made in the New York and Illinois cases.

"The Minnesota case does not furnish facts on which you would be justified in making an order of discrimination," said Mr. Flannery.

He further contended that Congress did not intend that section 13 of the amended act to regulate commerce should be used as a "revenue" section and in support of the section 15-a, the rate-making section. He also questioned the contention of the carriers that their revenues would be increased to the extent they indicated by an increase of 20 per cent in the intrastate rates, adding that experience had shown that an increase in rates resulted in a loss of traffic.

"I predict the carriers will be reducing their interstate passenger fares," he said. "They have reached the point where they are more than the traffic will bear."

B. W. Scandrett, of counsel for the Minnesota carriers, argued briefly, pointing out that the decisions in the New York and Illinois cases would apply in the Minnesota case. He said the contention of the carriers was that the transportation act made unlawful a lower level of intrastate than interstate fares and that the Commission had so decided in the New York and Illinois cases.

The record in the Minnesota case, he said, showed that the carriers would lose $2,700,000 annually if the intrastate fares remained on their present basis. He related instances of persons rebuying tickets at border points to defeat the interstate rates.

### Arkansas State Rate Case

Robert Knox, appearing for the Arkansas commission, and J. E. Turney, appearing for the carriers in the Arkansas intrastate rate case, waived argument before the Commission, November 30, as to the intrastate passenger fares. The same situation exists in that state as to those fares as in Illinois, the commission having held it was without authority to act because of statutory limitations.

The argument in the Arkansas case was confined to the question of increasing the rates on road-building materials used by subdivisions of the state. The Arkansas carriers did not apply to the state commission for authority to increase those rates because they held it did not have the authority to act thereon. Mr. Knox, however, contended that the federal Commission should not order those rates increased until the matter had been passed upon by the state commission, which he said had authority to grant or deny the carriers' application. He also raised the question of whether section 22 of the act to regulate commerce did not prevent increasing the rates. This section relates to the establishment of lower rates by the railroads for the carriage of property for the United States or municipal governments. Mr. Turney contended section 22 did not apply to the situation in Arkansas.

### S. Carolina State Rates

Argument was heard by the Commission, November 29, in the South Carolina intrastate rate case (No. 11774), the contention of counsel for the carriers being that the principles of law announced in the New York and Illinois passenger fare cases are alike applicable to the issues presented in the South Carolina case. Morris Lumpkin, special assistant attorney-general of South Carolina, said that in view of the decisions in the New York and Illinois cases his appearance was more for the purpose of entering a protest so that the state would be protected on the record for any action it might desire to take later, than to make an extended argument.

The South Carolina commission authorized all increases asked by the carriers with the exception of rates, fares and charges prescribed by statute. These were one way passenger fares, a minimum ticket charge, conductors' penalty charge, free baggage allowance and the intrastate switching charge. Under the South Carolina statute the one way passenger fare is fixed at 3 cents per mile; the minimum ticket charge is limited to 5 cents per passenger, whereas the interstate charge in the Southern states is 12 cents; the conductors' penalty charge for failure of passenger to buy a ticket before boarding the train is 18 cents for interstate travel, while the state allows no such charge on intrastate travel; the free baggage allowance in South Carolina is 200 pounds per passenger, whereas 150 pounds is the allowance in interstate travel, and the intrastate switching charge in connection with intrastate line hauls is $1 per car, whereas the interstate charge is $2.50. On some of the short lines the passenger fares are 4 and 5 cents per mile, under state law, and the carriers ask an advance of 20 per cent in those fares.

"The Commission holds in the New York case that the granting of the relief sought by the carriers does not constitute an unwarranted interference with the regulatory powers of the states in respect to purely intrastate traffic," said Charles J. Rixey, of counsel for the South Carolina carriers, "and thus disposes of the contention upon that subject which is advanced in the brief for the state commission in the present proceeding."

Mr. Rixey said the existing intrastate fares and charges in South Carolina, which were on a lower level than the interstate charges served to bring about "direct discriminations as between both persons and localities."

Mr. Lumpkin, referring to the request of the carriers for equalization of the interstate and intrastate switching charges, asked why the intrastate charges should be increased 150 per cent while the percentage increase authorized by the Commission in Ex Parte 74 was 25 per cent. He also opposed the imposition of a penalty charge on passengers who failed to buy tickets.

### Iowa Intrastate Rates

That the Commission, in deference to the authority of the state of Iowa, should not order the intrastate passenger fares in that state increased to the level of the interstate fares until the state legislature, which meets in January, had had an opportunity to act on the application of the railroads for an increase of 20 per cent, was argued by John E. Benton, general solicitor for the National Association of Railway and Utilities Commissioners, before the Commission, November 30, in the argument in the Iowa case.

Chairman Clark pointed out that at the present time, if it were found that discrimination against interstate commerce existed in Iowa by virtue of the lower level of intrastate passenger fares, the Commission was the only body having authority to remove that discrimination. He asked whether the Commission could not say that it would remove the discrimination until the state legislature had an opportunity to act and remove the discrimination itself.

A. A. McLaughlin, of counsel for the carriers, declared Mr. Benton was asking a great deal in recommending deference to state authority when the railroads faced an emergency as to revenues and that the emergency did not call for observance of the rule of comity invoked by counsel for the state commission. He pointed out that the same situation which obtained in Iowa existed in a number of states and that the loss to the carriers would be irreparable if action were delayed until state legislatures met and acted.

The Iowa commission authorized all increases except as to passenger fares, which are prescribed by statute, and the surcharge on travel in Pullman cars. A 3-cent fare, under federal court orders, is in effect, while the state law prescribes a 2-cent fare. The Iowa commission held it had no authority to act as to the passenger fares requested as the legislature had reserved that power of regulation unto itself.

Mr. Benton cited the Commission's decision in the Illinois passenger fare case as an example of the Commission exercising authority over rates over which the state commission has no jurisdiction. He said the request of the carriers to the Illinois commission for an increase in passenger fares "might as well have been made of the mayor of Chicago." He declared that in the New York case the Commission had said the transportation act did not deprive the states of their control over rates, but that in the Illinois case "the Commission's declaration that the act did not take jurisdiction from the state and repose it in this Commission was put to the test and it did not stand."

"In other words," he said, "the Commission held that under the transportation act it might exercise original jurisdiction over intrastate rates.

"For the purpose of this argument, therefore, I shall assume that the Commission has power to prescribe a state-wide schedule of passenger rates within the state of Iowa, as requested by the carriers, to take the place of existing intrastate rates, which have not received the same percentage of advance as was allowed by this Commission upon interstate rates.

"This leaves for consideration the single question whether in this case at this time the Commission ought to exercise that power.

"A question of comity in its broadest sense is involved. Perhaps I should say rather a question of public policy. The question is not how far can the federal power be exercised to control intrastate commerce in Iowa. The question is—assuming that the power of control does exist, and is reposed in you, as you have decided, ought it to be exercised, under the state

of facts shown in this record? It is that question alone that I desire to discuss.

"In the first place, what will be the effect of the exercise of the federal power? The United States Supreme Court has said it is of the nature of that power that where it exists it dominates. The transportation act provides that when you have once made an order prescribing rates, they shall continue in effect so long as the order stands. If, then, you make the order which the carriers are asking here, you will by that single act disable the state of Iowa from hereafter changing in the least degree any single passenger rate within its border—at least until you or your successors see fit to give up the exclusive control which by making the order you reach out and take.

"In the New York case you said: 'It is no answer * to say (that if we have the power claimed) it may have the effect of completely displacing state jurisdiction over state commerce." It may be no answer to the assertion that the power exists, but it is a compelling reason why the power should be reluctantly used, and only as a last resort.

"When the people of this nation through their Congress entrust to any man or set of men powers of great magnitude they have the right to be confident that a sense of responsibility and wise restraint, proportioned to the magnitude of the powers granted, will control their exercise. If it be true that this administrative board has been empowered, at a single blow, to strike down the legislative power of a sovereign state, relating to rates upon the traffic within its borders, is it too much to say that you should not exercise that power of destruction lightly?

"Does not the fact that Congress, by various provisions in the transportation act itself, has clearly made provision for the continuance of state power over state rates furnish a reason why you should not destroy that power till it is certain there is compelling necessity for doing so?

"To these questions I think there can be but one answer, and I proceed to examine what showing of compelling necessity has been made in this case.

"To state the facts as the carriers do, you have found that, to give the carriers the fair return prescribed by law, all the passenger rates in Iowa should be increased 20 per cent, and interstate fares have been increased that percentage under authority of your order. If the intrastate rates are not advanced to the same extent, there will be a shortage in the aggregate return aimed at by the act. The only authority in Iowa having jurisdiction over intrastate rates is the legislature, which will meet on the second Monday of January next. It has not been in session since you made your finding as to what increase was necessary, nor has it had any opportunity to act with respect to passenger rates since the end of federal control. These are the facts, stated, I think, in such manner that there will be no dispute about them.

"We can make a further statement concerning your duty under the law as to these intrastate rates, which will not be disputed. It is your duty to act concerning them as Congress intended you to act, and what Congress intended is to be ascertained from a construction of all the provisions of the legislation which it passed, each provision being construed in the light of all others.

"Assuming that Congress in Section 13 granted you power to prescribe intrastate rate for Iowa, and thus to destroy the legislative power of the state over such rates, did Congress intend you to take such action before the legislature of Iowa should have reasonable opportunity to act?

"Section 208a does not leave the answer to that question doubtful. 'All rates, fares, and charges * which on February 29, 1920, are in effect * shall continue in force, * until thereafter changed by state or federal authority respectively.'

"Again in Section 13 of the amended act Congress provided machinery and procedure with respect to rates prescribed by state authority, indicating beyond question, it would seem, that Congress intended a continuance of state power to regulate rates.

"In the face of these provisions, how can anybody say that the intent of Congress was that the entire rate structure of a state should be changed by this Commission before the state authority was afforded any reasonable opportunity to act, thereby destroying such authority? If that is done, what becomes of the words, 'shall continue in force until changed by state or federal authority respectively?' Can there be any doubt as to the import of the word 'respectively?'

"What is there in the situation which, in spite of these provisions evidencing the intent of Congress, makes it proper that this Commission shall immediately exercise the federal power, which it rules has been committed to it? Certainly a matter of some delay incident to affording the legislature reasonable opportunity to act would not be a sufficient reason, for Congress knew of these statutory rates which the carriers are complaining against. It knew that substantial time must pass before they could be changed by state authority, and it nevertheless enacted Section 208a and the other provisions of the transportation act which I have referred to. In the case of the state of Iowa the legislature is now on the eve of assembly. Almost before any order you can make will take effect, it will have met. Can any reason be given why it should not be afforded a reasonable opportunity to act? None has been given. I respectfully say that a reason ought to be given from some quarter before the legislative power of a state is destroyed.

"What do you say if you make this order now? What will it mean to the people of Iowa? It will mean that you say to them: "We, the Interstate Commerce Commission, have found what rates are fair for the carriers operating in Iowa. We are so sure that the legislature of Iowa will not act justly in the exercise of its legislative power, that we consider it not worth while to afford it any opportunity whatever to do so, and feel justified in making an order which will entirely destroy that power so far as intrastate passenger rates in Iowa are concerned.'

"That is what you will say to the people of Iowa, and you will say it in the face of the fact that a distinguished member of the Iowa commission sat with you many weeks during the hearing and consideration of the Interstate advanced rate cases, and gave his unqualified approval to what you did in those cases. You will say it also in face of the fact that promptly and by unanimous action the Iowa railroad commission granted, without material exception, every advance in rates over which it had jurisdiction.

"If it be true that Congres has imposed upon you authority to make a complete schedule of intrastate rates for Iowa, and by so doing to 'completely displace state jurisdiction over state commerce,' may not the people of Iowa well feel aggrieved if, in the face of the attitude of their state government as it has thus far been expressed, you take this action on the very day, almost, that their legislature assembles?

"It may be merely an old fashion notion of mine, but I believe the people of this country are attached to their state governments—that they have confidence that the acts of those governments are based upon motives of honesty and justice—that the people of every state expect the federal government will treat their state with due appreciation of its honor and dignity. If now this Commission, exercising the federal power which it holds has been committed to it, proceeds upon the assumption that the legislature of Iowa will not act justly in the matter of rate legislation, I believe the people of that state will feel that they have just cause for resentment. I earnestly believe, furthermore, that such an assumption is not in accordance with the fact, and that it ought not to be made by the federal government, nor by any body representing the federal government, with respect to any state in this Union.

"I do not attempt to say what the legislature will do if you refrain now from foreclosing its action. Nobody can speak for the legislature of Iowa except the legislature itself. I have no commission to come here on behalf of that state nor any of its authorities to request you to withhold your action upon assurances that, if you will, any particular course will be followed by Iowa. It would scarcely comport with the dignity of a state to seem to bargain for a continuance of its powers by agreeing to use them in a particular way or to seek for such continuance as a boon.

"Speaking rather as the representatives of all the state authorities for which I have appeared, I urge that a proper respect for the dignity of any state ought to lead you to assume that its action will be just and reasonable, and that if changed conditions require new legislation, such new legislation will be enacted in due and orderly course when the legislature assembles."

Mr. McLaughlin, speaking for the carriers, reviewed the record in the Iowa case to show that discrimination against interstate commerce resulted from the lower intrastate fares. He said on a 3-cent fare basis, the annual loss to the carriers was estimated at over $3,000,000 and on a 2-cent fare basis, at over $8,000,000. He said he would not discuss the principles of law because they had been settled in the New York and Illinois cases.

J. H. Henderson, commerce counsel for the Iowa commission, said he had intended making an extensive argument but that in view of the decisions of the Commission in the New York and Illinois cases he would take cognizance of the old adage about "butting your head against a stone wall." So he appeared, he said, to see that the record was properly made and to review the situation in Iowa briefly. He said the Iowa authorities felt the application of the carriers for an increase in passenger fares should be passed on by the state legislature when it met in January, and that it was not to be presumed that it would not deal with the carriers fairly.

E. D. Perry, special counsel representing the attorney-general of Iowa, also said that in view of the fact that the Commission had established its interpretation of the transportation act, he appeared only to ask that a proper record be made so that the state might test the action of the Commission in the courts if it wished to do so later.

The Commission has amended its order in the Illinois case by striking therefrom the names of the Erie Railroad Company and Pennsylvania Railroad Company, Western Lines, and inserting the names of the Chicago & Erie Railroad Company, Chi-

cago & North Western Railway Company, Kankakee & Seneca Railroad Company, the Pittsburgh, Cincinnati, Chicago & St. Louis Railroad Company, the Pennsylvania Railroad Company and Rock Island Southern Railway Company, as parties to the proceeding.

### ILLINOIS RATE CASE

Federal Judge Carpenter, November 29, granted a temporary injunction by which fourteen railroads operating in the state of Illinois are permitted to raise their rates from 3 cents to 3.6 cents on December 1, the date set for the increase by the Interstate Commerce Commission. Arguments to make the injunction permanent will be heard in ten days. In the meantime it is expected that petitions for similar injunctions will be filed by the remainder of the state's thirty-nine railroads.

The injunction granted by Judge Carpenter restrains Attorney-General Edward J. Brundage, the state's attorney, and the public utilities commission from prosecuting them when they raise their rates from 3 cents to 3.6 cents per mile, as ordered by the Interstate Commerce Commission on November 26.

Attorneys representing the roads say their action was primarily precautionary. They filed their suit, asking for the injunction, they said, to forestall Attorney-General Brundage, who had announced that he was preparing to file a bill for an injunction restraining the railroads from raising their passenger rates.

## REVENUE FREIGHT LOADING

*The Traffic World Washington Bureau*

Loading of commercial freight by class I roads dropped to 880,528 cars in the week ended November 20, a reduction of 39,381 cars, as compared with the loadings of the preceding week. In the corresponding weeks of 1919 and 1918 the loadings were 854,601 and 857,377, respectively.

In the week ending November 13, reports of the car service division of the American Railway Association show the total loadings of revenue freight amounted to 919,909 cars, as compared with 910,592 in the preceding week.

Up until the week ending November 20 loadings have stayed above the 900,000 mark for many weeks, the heavy loading of coal being the principal factor in keeping them above that mark.

In the week ending November 6 the loading of 910,592 cars was comparable with the loadings of 826,724 cars in the corresponding week of 1919 and 873,854 in 1918. The total loading for all roads in the week of November 6 as compared with the corresponding week in 1919 was as follows: Grain and grain products, 35,260 and 39,221; live stock, 31,384 and 40,268; coal, 202,607 and 112,117; coke, 18,814 and 11,943; forest products, 63,313 and 58,777; ore, 57,398 and 31,726; merchandise, L. C. L., 201,997 and 146,354; miscellaneous, 299,019 and 386,318; total, 1920, 910,592; 1919, 826,724; 1918, 873,854.

The detailed figures showing the number of cars of commercial freight loaded in each district in the week ending November 13 as compared with the corresponding week of 1919, according to the weekly report of the car service division of the American Railway Association, are as follows:

Eastern district: Grain and grain products, 5,544 and 6,628; live stock, 3,617 and 4,424; coal, 55,656 and 26,998; coke, 3,020 and 3,241; forest products, 7,119 and 7,215; ore, 9,603 and 4,815; merchandise, L. C. L., 45,320 and 33,126; miscellaneous, 88,211 and 110,651; total, 1920, 218,090; 1919, 197,208; 1918, 190,257.

Allegheny district: Grain and grain products, 2,779 and 2,963; live stock, 4,209 and 4,085; coal, 73,128 and 31,651; coke, 6,472 and 4,331; forest products, 3,914 and 4,417; ore, 11,941 and 6,699; merchandise, L. C. L., 38,046 and 42,452; miscellaneous, 68,738 and 71,932; total, 1920, 209,227; 1919, 168,530; 1918, 177,424.

Pocahontas district: Grain and grain products, 121 and 213; live stock, 280 and 326; coal, 24,949 and 21,300; coke, 560 and 639; forest products, 1,959 and 1,783; ore, 178 and 220; merchandise, L. C. L., 2,427 and 161; miscellaneous, 6,120 and 9,423; total, 1,920, 36,594; 1919, 34,065; 1918, 36,126

Southern district: Grain and grain products, 2,753 and 3,190; live stock, 2,635 and 3,205; coal, 29,964 and 7,980; coke, 1,296 and 291; forest products, 17,667 and 18,104; ore, 2,711 and 2,468; merchandise, L. C. L., 37,415 and 19,897; miscellaneous, 35,657 and 59,917; total, 1920, 130,098; 1919, 115,052; 1918, 114,472.

Northwestern district: Grain and grain products, 11,356 and 11,459; live stock, 10,702 and 9,719; coal, 11,209 and 11,483; coke, 1,919 and 756; forest products, 14,426 and 14,265; ore, 21,974 and 12,755; merchandise, L. C. L., 27,817 and 21,230; miscellaneous, 32,357 and 42,515; total, 1920, 131,660; 1919, 124,182; 1918, 128,298.

Central Western district: Grain and grain products, 8,243 and 10,452; live stock, 14,581 and 15,836; coal, 25,891 and 3,676; coke, 472 and 467; forest products, 4,779 and 5,356; ore, 2,715 and 2,664; merchandise, L. C. L., 29,262 and 22,071; miscellaneous, 44,119 and 53,076; total, 1920, 130,062; 1919, 113,598; 1918, 108,834.

Southwestern district: Grain and grain products, 3,491 and 4,416; live stock, 2,999 and 3,515; coal, 7,238 and 1,150; coke, 155 and 117; forest products, 7,665 and 6,627; ore, 239 and 320; merchandise, L. C. L., 16,532 and 12,576; miscellaneous, 25,859 and 26,948; total, 1920, 64,178; 1919, 55,669; 1918, 55,019.

Total, all roads: Grain and grain products, 34,267 and 39,321; live stock, 39,023 and 41,120; coal, 228,035 and 104,238; coke, 13,894 and 9,942; forest products, 57,529 and 57,767; ore, 49,361 and 29,941; merchandise, L. C. L., 196,819 and 151,513; miscellaneous, 300,961 and 374,462; total, 1920, 919,909; 1919, 808,304; 1918, 810,430.

Figures on merchandise, L. C. L., and miscellaneous should be added to get a fair comparison because some roads are not able to separate those figures for 1919.

## FREIGHT TRAIN PERFORMANCE

*The Traffic World Washington Bureau*

Class I railroads in the month of September had 40,999,843,000 net ton-miles of freight, or 1,706,992,000 net ton-miles less than they had in August, but 564,335,000 greater than in July, in which a new record was established by the railroads as to net ton-miles, according to compilations made by the Bureau of Railway Economics. The class I carriers also achieved an average loading of thirty tons per car in September, while the average in September, 1919, was 28.3 tons. The average daily movement per car of 28.1 miles also was attained, the Bureau's figures show, and exceeded the average for any month during federal control and was surpassed only in June and July, 1917.

The bureau of statistics of the Interstate Commerce Commission has issued its summary of freight operating statistics for August and the eight months ending with August, as compared with the corresponding figures of 1919. The performance of the carriers shown by the summary has been indicated heretofore in preliminary statements by the commission and also statements by the Bureau of Railway Economics.

In a statement covering statistics of railroads having annual operating revenues in excess of $25,000,000, the bureau of statistics of the Commission showed that the performance of individual carriers as to car-miles per car day, which is the measure of speed with which equipment is being used, whether loaded or empty, for September as compared with that month of 1919, was as follows (first figure for 1920 and second for 1919):

Boston & Albany, 29.9 and 34.6; Boston & Maine, 19 and 17.8; New York, New Haven & Hartford, 12.6 and 13.5; Delaware & Hudson, 28.9 and 31.2; Delaware, Lackawanna & Western, 32 and 30.9; Erie, including Chicago & Erie, 33 and 34.3; Lehigh Valley, 23.1 and 23.7; Michigan Central, 27 and 24; New York Central, 26.3 and 26.3; Pere Marquette, 17.9 and 17.8; Pittsburgh & Lake Erie, 12.5 and 10.5; Wabash, 26.6 and 27.8; Baltimore & Ohio, 25.6 and 24.4; Central of New Jersey, 14.2 and 15.1; Big Four, 21 and 31.8; Pennsylvania system, 22.6 and 22.7; Philadelphia & Reading, 20.8 and 20.6; Chesapeake & Ohio, 37.2 and 31.2; Norfolk & Western, 34.9 and 36.8; Atlantic Coast Line, 22.9 and 20.3; Illinois Central, 43.8 and 39; Louisville & Nashville, 23.9 and 22; Seaboard Air Line, 28 and 23.3; Southern Railway, 29.9 and 30.7; Chicago & Northwestern, 26 and 23.7; Chicago, Milwaukee & St. Paul, 35.2 and 31.2; Chicago, St. Paul, Minneapolis & Omaha, 23 and 25.5; Great Northern, 31.5 and 33; Minneapolis, St. Paul & Sault Ste. Marie, 28.9 and 32.2; Northern Pacific, 34.6 and 35.1; Oregon-Washington, 36 and 31.7; A. T. & S. F., 37.3 and 37.1; Chicago & Alton, 22.9 and 22.6; Chicago, Rock Island & Pacific, 31.5 and 25.2; Chicago, Burlington & Quincy, 36.6 and 35.4; Denver & Rio Grande, 24.1 and 20.7; Oregon Short Line, 48.5 and 47.4; Southern Pacific, 38.4 and 38.8; Union Pacific, 88.3 and 76.7; M. K. & T., 29 and 28.8; M. K. & T. of Texas, 19.6 and 16; Missouri Pacific, 24.3 and 27.9; St. Louis, San Francisco, 23.1 and 22.5; Texas & Pacific, 26.7 and 19.6.

The net ton-miles per car day, which is generally considered as the final figure showing freight train operation performance, in September, 1920, in comparison with the same month in the preceding year, was as follows (first figure for 1920 and second for 1919):

Boston & Albany, 513 and 607; Boston & Maine, 348 and 314; New Haven, 233 and 252; Delaware & Hudson, 701 and 744; D. L. & W., 637 and 653; Erie, including Chicago & Erie, 597 and 657; Lehigh Valley, 485 and 554; Michigan Central, 480 and 399; New York Central, 481 and 496; Pere Marquette, 367 and 340; Pittsburgh & Lake Erie, 359 and 286; Wabash, 568 and 543; B. & O., 618 and 567; Central of New Jersey, 305 and 313; Big Four, 559 and 630; Pennsylvania system, 549 and 533; Philadelphia & Reading, 502 and 517; C. & O., 915 and 775; Norfolk & Western, 924 and 887; Atlantic Coast Line, 379 and 318; Illinois Central, 877 and 750; L. & N., 436 and 387; Seaboard, 456 and 407; Southern, 626 and 621; C. & N. W., 499 and 391; C. M. & St. P., 611 and 553; C. St. P. M. & O., 432 and 415; Great Northern, 602 and 620; Soo Line, 513 and 577; Northern Pacific, 647 and 645; Oregon-Washington, 727 and 609; Santa Fe, 566 and 570; Chicago & Alton, 406 and 403; C. R. I. & P., 569 and 483; Burlington, 682 and 655; D. & R. G., 443 and 370; Oregon Short Line, 890 and 847; Southern Pacific, 708 and 660; Union Pacific, 1439 and 1125; M. K. & T., 421 and 451; M. K. & T. of Texas, 341 and 262; Missouri Pacific, 467 and 510; St. Louis-San Francisco, 385 and 412; Texas & Pacific, 486 and 333.

# IMPROVED CAR SITUATION

*The Traffic World Washington Bureau*

The car service division of the American Railway Association November 27 authorized the following:

"Further indications of an improvement in the car situation are shown by data just compiled by the car service division of the American Railway Association.

"For the week which ended Novembery 15 surplus cars (the total number in excess of current requisitions) totaled 19,865, an increase of 7,832 cars over the previous week. This surplus was principally located in the south and central west.

"Reports from Class 1 railroads throughout the country also showed a reduction in the car shortage which continues to exist in certain parts of the country, the average daily shortage for the week being 35,356 cars, or a decrease of 4,332 cars, compared with the preceding week.

"The increase in the number of surplus cars does not come as a surprise in view of statistics compiled by the Interstate Commerce Commission and the Bureau of Railway Economics showing increased efficiency by the railroads in the movement of freight.

"During September the average daily movement of loaded freight cars was 28 1-10 miles compared with 25 miles in June. In September the average freight car carried an average load of thirty tons or within one-tenth of a ton of the highest point reached at any time during the last four years. In June the average load was 29 tons.

"Each increase of one mile in the average movement of loaded freight cars is equivalent to the addition of approximately 100,000 cars, while each increase of one ton in the average load in equivalent to the addition of 60,000 cars. This, therefore, would be equivalent, through the increased movement of freight cars, of 310,000 cars and 60,000 cars due to heavier loading, or altogether a total increase, without additional capital investment, of approximately 370,000 cars during the summer months when operating conditions were almost identical."

In the week ending November 22, according to the car service division of the A. R. A., the car shortage amounted to 30,724 as compared with 35,356 the preceding week. The surplus amounted to 32,368 as compared with 19,865 in the preceding week. Of the shortage figures, 16,368 were coal cars and 5,083 were box cars, and the remainder was miscellaneous. Of the surplus figures 22,398 were box cars, 1,372 were coal cars, and the remainder miscellaneous.

# CARS ON HOME LINES

*The Traffic World Washington Bureau*

According to reports received by the car service division of the American Railway Association, 32½ per cent of all cars were on home lines November 15. This is an increase of 1.2 per cent or 28,000 cars since November 1. On March 1, when federal control ceased, the percentage was approximately 29.

The division, under date of November 27, sent the following circular, CSD-96, to railroads:

"All orders of the car service division for the movement of box cars have been completed or cancelled. It is believed that the normal return of cars to owners in the manner provided by car service rules will satisfactorily meet all current requirements.

"Present transportation conditions afford an unusual and timely opportunity to promote this movement of cars to owners as repeatedly urged by the executives. Indications are that the present lull in demand for cars is only temporary. An increased percentage of home cars on line will permit repairs and rebuilding of equipment to meet a later increase in demands for transportation, and it is of great importance that all roads co-operate fully to attain these results. To this end liberal and effective compliance with obligations of all to the handling of cars under the car service rules is essential.

"There is apparent confusion with respect to the meaning or intent of car service rules 1 to 5, with the difficulty centering about the obligation of the receiving line in connection with the handling of empty cars which include the acceptance of:

1. Their own cars at any junction point (subject to Car Service Rule 5).
2. Cars of direct connections if last delivered loaded.
3. Cars of indirect connections if last delivered loaded and provided movement is in direct route to home road.
4. Cars of direct or indirect connections not previously delivered loaded provided movement is in direct route to home road, subject to equalization balance by classes at each junction point and to restrictions on delivering line imposed by note to Car Serive Rule 3 (e).
5. Cars offered for short routing under Car Service Rule 4.

Note: There is no "home route" under car service rules except that provided in Rule 3 D and 3 E. The rule formerly in effect requiring the movement of an empty car home by the exact route it moved loaded has been eliminated.

"To more expeditiously relocate cars to the home road under the car service rules and to avoid cross movement of empty cars and unnecessary empty mileage where a surplus of cars of any type exists it is further directed that:

1. Cars of indirect connections be used preferably for off line loading to and in the direction of (but where possible not beyond) the home road.

Note: Cars must not be offered empty under Rule 3 (e) while there is available loading in substantially similar movement for which other cars (less desirable from the standpoint of relocation to owners) are being used.

2. Cars of direct connections be moved loaded or empty to owners.
3. To whatever extent necessary to relieve further surplus, loading be confined to foreign cars as far as possible and proper.

Note: The present actual surplus of cars is such that the storage of only a small percentage of home cars on line will reduce the car supply to the basis of actual requirements.

"The additional switching service necessary to the selection of cars for loading in accordance herewith will show profitable results in the per diem account. Where supply is available, cars at junction points with owners should be delivered home empty and loading to such roads confined to home movement of cars of indirect connections.

"Under the principle of equalization in interchange a road will not deliver empty cars contrary to car service rules. Where circumstances are such that the obligation of the debtor road cannot be liquidated otherwise, and the creditor road requires the cars, proper action will be directed by the Car Service Division.

"Private Cars: In the handling of private cars all roads should observe strictly the rule embodied in the conclusion of the Interstate Commerce Commission in the private car investigation announced July 31, 1918, as follows:

That carriers should publish in their tariffs a rule that private cars when unloaded at destination, unless otherwise ordered by the owner or lessee, must be promptly transported, loaded or empty, in the direction of the plant of the owner or lessee.

"This conclusion of the Commission required that it be embodied by the roads in a tariff rule, but in view of the prospective termination of federal control the Commission later instructed that until further advised, the carriers might deal with this matter by adequate car service rules. The obligation, therefore, rests upon each road to see that the same rule is strictly observed, failing which it is to be expected that the Commission may again require that the rule be embodied in tariff form. This is a matter that should be given very careful attention."

# CAR SUPPLY SITUATION

*The Traffic World Washington Bureau*

The semi-monthly bulletin of the car service division of the American Railway Association of percentages of freight cars on line to ownership as of November 15, Class 1 roads, shows the percentages by districts as follows: Eastern, 94.5 as compared with 97.4 in 1919; Allegheny, 99.2 as compared with 98.7 in 1919; Pocahontas, 80.8 as compared with 84.9 in 1919; Southern, 89.8 as compared with 96.8 in 1919; Northwestern, 99.5 as compared with 105 in 1919; Central Western, 97.9 as compared with 104.9 in 1919; Southwestern, 109.5 as compared with 106.6 in 1919; total, all districts, 96.5 as compared with 99.8 in 1919. Canadian roads, 98.2 as compared with 92.2 in 1919.

The division's summary of general conditions as of November 26, issued December 1, follows:

Box cars: Car supply for grain loading generally satisfactory, except for certain points in the Northwest. On practically all roads there is a sufficient supply of box cars for ordinary loading. The movement of cars to western roads on relocation orders has entirely ceased. The delivery of cars to home roads is increasing, thereby providing an opportunity for making needed repairs and getting a suitable supply of good order cars for the heavier demands that will undoubtedly follow the turn of the year.

Auto cars: The demand for automobile cars is more than sufficient to employ the supply being made available by return to home roads. Cars should continue to be loaded to auto-manufacturing territory, but need not be moved empty except under Car Service Rules or when specifically ordered. It is important to avoid using automobile cars for cement, flour or other commodities that leave a residue in the cars that will damage the finish of automobiles when later used for that loading.

Stock cars: Demand continues heavy at many points, and efforts must be continued to move cars to owning lines and in accordance with specific orders issued for equalization or relocation.

Refrigerator cars: There is an unusually heavy demand and consequent general shortage of refrigerator cars, particularly pronounced in Maine and other eastern territory. Fruit and vegetables continue moving in considerable volume in the East and Middle West. Citrus fruit moving from Florida while not in same volume as during past seasons, is steadily increasing. All concerned should continue efforts to move refrigerators promptly.

Open top cars: In comparison with the first part of the month, the last half of November will, undoubtedly, show a slight increase in the production of bituminous coal, notwithstanding the non-productiveness of a considerable percentage of the mines on Thanksgiving Day. It is now estimated that the average weekly production for the month will hardly be below 11,700,000 tons. The coal situation has eased perceptibly during the past few weeks. On November 16th modification to Service Order 20 was made effective, releasing from perferential distribution for coal all flat bottom gondolas regardless of height. These

cars are now being distributed for the transportation of commodities other than coal. This has resulted in relieving, to a considerable extent, conditions in the steel loading districts where a large amount of mill products was stored awaiting transportation. The Interstate Commerce Commission also cancelled Service Order 21, effective November 24th, in view of the generally improved situation as regards fuel stocks at the plant of public utilities. Now that a large percentage of the open top equipment is available for distribution to commodities other than coal, such commodities are receiving greatly improved car service, and the issuance of special permits, which were formerly in effect under Service Order 20, has been entirely discontinued.

Flat cars: Demand continues for flat cars in the Northwest territory and Southern States to protect shipments of logs and lumber. There is also a heavy demand for this type of equipment in the limestone district and it is necessary that all railroads continue to promptly release and move in accordance with specified orders to the territories as directed.

## TONNAGE FIGURES

*The Traffic World Washington Bureau*

In the quarter ended June 30, 1920, the Class 1 railroads of the United States carried 520,270,086 tons of carload and L. C. L. revenue freight, according to a summary of freight commodity statistics issued by the bureau of statistics of the Interstate Commerce Commission. The total number of tons of carload and L. C. L. freight originated on the lines of the reporting roads was 299,738,968 tons.

The summary shows that by classes of commodities the revenue freight originated and the total revenue freight carried was as follows: Products of agriculture, 860,339 carloads and 20,633,142 tons originated; and 1,878,412 carloads and 43,445,220 tons carried; products of animals, 528,500 carloads and 6,372,393 tons originated; and 855,546 carloads and 10,743,059 tons carried; products of mines 3,483,748 carloads and 169,627,265 tons originated; and 5,640,473 carloads and 272,179,656 tons carried; products of forests, 964,115 carloads and 26,448,627 tons originated; and 1,827,259 carloads and 49,631,766 tons carried; manufactures and miscellaneous, 2,455,669 carloads and 63,083,573 tons originated; and 4,781,051 carloads and 121,664,689 tons carried.

The grand total of carload traffic was 8,292,371 carloads and 286,165,000 tons originated, and 14,982,741 carloads and 497,664,390 tons carried, while 13,573,968 tons of L. C. L. freight was originated and 22,605,696 tons were carried, making the totals as to tonnage given in the first paragraph above.

In the Eastern district, 3,671,998 carloads and 140,699,692 tons of carload and L. C. L. revenue freight were originated, and 7,441,254 carloads and 276,477,385 tons were carried.

In the Pocahontas district, 346,244 carloads and 16,190,887 tons of carload and L. C. L. revenue freight were originated and 514,693 carloads and 21,601,580 tons were carried.

In the Southern district, 1,174,311 carloads and 36,906,562 tons of carload and L. C. L. revenue freight were originated, and 2,060,779 carloads and 61,719,139 tons were carried.

In the Western district, 3,099,818 carloads and 105,941,827 tons of carload and L. C. L. revenue freight were originated, and 4,966,015 carloads and 160,471,982 tons were carried.

### PER DIEM RULE AMENDED

The American Railway Association, in Circular No. 2072, says:

"Referring to Circular No. 2063, dated November 1, 1920, covering letter ballot, on the recommendation of the executive committee of the American Railway Association and of the advisory committee of the Association of Railway Executives, which was approved by the Association of Railway Executives, that, effective November 1, 1920, the rate for the use of freight cars named in Rule 1 of the code of per diem rules be made $1.00 per car per day; if approved by a majority of the membership, that membership to represent two-thirds of the freight cars owned and controlled by the members of the American Railway Association. The total membership is 389, and the cars owned and controlled by members 2,406,935. The majority requisite for approval is 195 memberships, owning and controlling 1,604,624 cars. The vote on per diem rule 1 was as follows:

Yes—285 memberships, representing 2,166,145 cars owned and controlled.

No—88 memberships, representing 222,562 cars owned and controlled.

Not voting—16 memberships, representing 17,928 cars owned and controlled.

"The proposition to amend Per Diem Rule 1 is approved. Please take notice, therefore, that, effective November 1, 1920, the per diem rate will be $1.00 per car per day."

### Z. & W. WANTS TO ISSUE NOTES

The Zanesville & Western Railway Company has filed an application with the Commission asking for authority to issue a ten-year 6 per cent promissory note for $60,000. The applicant proposes to give the note to the New York Central Railroad Company for a loan to be used for additions and betterments to the applicant's roadway and structures.

# Questions and Answers

In this department will be answered questions of both legal and practical nature that confront persons dealing with traffic. A specialist on interstate commerce law, who is a member of our legal department, will give his opinion in answer to any simple question relating to the law of interstate transportation of freight. A traffic man of long experience and wide knowledge will answer questions relating to practical traffic problems. We do not desire to take the place of the traffic man but to help him in his work. Persons desiring immediate answer by mail or wire or a more elaborate treatment of any question—by the citation of authorities in a legal opinion, for instance—may obtain this kind of private service by the payment of a reasonable fee. The right is reserved to refuse to answer in this department any question, legal or traffic, that it may appear to us unwise to answer or that involves a situation too complex for the kind of investigation herein contemplated.

Address Questions and Answers Department,
**Traffic Service Corporation**, Colorado Building, Washington, D. C.

### Demurrage—Cars Held for Orders

**New Jersey.**—Question: A and B are two consignees operating at the same station on a certain railroad. All cars upon arrival at this station are held by the railroad subject to the orders of both A and B, in accordance with Rule 3, Section B-1, of Agent J. E. Fairbanks' National Car Demurrage Tariff. I. C. C. No. 8.

Under date February 2nd, 1920, a car arrived at this station consigned to A ,the regular arrival notice being sent to A by the railroad company. Under date of February 3rd, A issued instructions to the railroad company to deliver the car to B. In view of the fact that all cars consigned to B were also held by the railroad company subject to B's orders, the car was held by the railroad awaiting delivery instructions from B. Under February 7th, B ordered the car placed on his private siding, the car being placed for him the same day and finally unloaded on February 10th. The railroad company presented a demurrage bill to B, with the free time thereon and demurrage charges figured in accordance with Rule 3, Section B-1 of the Demurrage Tariff.

B refuses to pay these charges claiming that the railroad company was at fault in not notifying him of the fact that the car had already arrived at the time A presented his delivery instructions for the car. The railroad authorities have taken the stand that it had accomplished its duties when it sent notice of arrival to A, who was the only party entitled to receive an arrival notice. Will you please advise if the stand taken by the railroad company is correct and is the railroad company required to send a second notice of this kind? Also can the railroad company look to A for payment of this bill?

Answer: The car having been consigned to A, there was no obligation on the part of the carrier to notify B of its arrival and inasmuch as Section B-1 of Rule 3 provides that as to cars held for orders, regardless of whether or not such cars have been placed in position to unload, free time will be computed from the first 7:00 a. m. after the day on which notice of arrival is sent or given to the consignee or party entitled to receive same, the carrier is correctly computing the free time from the first 7:00 a. m. after notice of arrival was sent to A.

### Freight and Demurrage Charges on Reconsigned Shipment

**Minnesota.**—Question: Car of fir lumber shipped from Seattle, Washington, September 1, 1920, destined Chicago, Illinois, routed Northern Pacific Railway, care C. B. & Q. Railway; shipper diverted car to ourselves, Minnesota Transfer, and we hold exchange bill of lading dated September 14th. Car passed Minnesota Transfer, Minnesota, September 11th; arrived at Chicago September 15th, and we were not notified of its arrival at Chicago until September 18th. We then immediately ordered the car returned to Minnesota Transfer, in line with the exchange bill of lading.

In view of the bill of lading, will it be necessary for carriers to protect through rate of 66.5 cents to Minnesota Transfer, also waiving demurrage which accrued at Chicago? You will note car passed Minnesota Transfer, Minnesota, before shippers requested it be diverted to Minnesota Transfer. However, carriers erroneously issued an exchange bill of lading without exceptions.

Answer: Assuming that the exchange bill of lading was issued by the Northern Pacific at Seattle, Washington, we are of the opinion that this bill of lading is not binding on the carriers as it was issued after the shipment had passed out of the possession of the Northern Pacific. This is in accordance with Paragraph (d), Rule 4, of the General Reconsigning Rules, which reads as follows: "When diversion or reconsignment is requested after shipment has passed out of possession of this company, or when request is received too late for this company to effect the change desired, such request will be transmitted to direct connecting carrier to which shipment was delivered, when the responsibility of this company will end; and the shipment will be subject to rules of the carrier on whose rails the diversion or reconsignment is accomplished"

As car reached Chicago, the original destination, on the day following the placing of reconsigning instructions at Seattle, we are of the opinion that freight charges should be collected on

vasis of the combination over Chicago, as carriers could not reasonably be expected to stop the car short of that point.

As to whether or not the carriers are entitled to assess demurrage on this shipment at Chicago, depends on whether or not they acted with due diligence in advising shippers that their original reconsigning instructions could not be carried out, in view of the fact that shipment had already passed Minnesota Transfer, the point to which shippers desired shipment reconsigned. If the carriers acted with due diligence in this connection, it is our opinion that demurrage charges properly accrued at Chicago.

### Demurrage—Empty Private Tank Cars

**Chicago.**—Question: I note your answer to "Texarkana," page 925, Traffic World, Nov. 13. I wish to call your attention to the fact that Paragraph B, Section B, Rule I, of the tariff, says private cars are exempt from demurrage.

Answer: Under the provision of paragraph 4 (a) of section B of rule 1 of the National Car Demurrage Rules, private cars are exempt only when the ownership of the car and track is the same. Inasmuch as the carriers referred to in the question of "Texarkana" are assessing demurrage, we assumed that the tank cars in question are not owned by the owner of the siding on which such cars are delivered.

### Routing—Shipper's Must Be Observed by Carrier

**Wisconsin.**—Question: We made a shipment to a certain railroad corporation under a contract that grants us free transportation over the lines of their road. The shipment was consigned to the railroad company for us in care of the purchasing official and prepaid to the connection with the initial line. The shipment was routed via the initial line, care of the delivering line. The initial line, however, disregarded the routing and gave the shipment to another line. The consequence was that when the shipment arrived at destination there were freight charges assessed. Furthermose, the delivery made was not the delivery that would have been made had the shipment moved via the original routing. We had a crew of men at destination who were waiting for the shipment and, in order to guard against delay that would have caused great expense, the shipment was accepted and hauled to destination.

In answer to our claim for refund, of the freight charged and haulage, the railroad advises that this was not a case of misrouting, inasmuch as that the rates over the route over which shipment moved and those applying over the original routing were the same and that the fact that we had a contract granting free transportation, did not come into consideration. They also claim that, as we accepted the shipment and did not give the delivering carrier an opportunity to make proper delivery, that they were not responsible for the drayage. Are we not entitled to a refund of the amounts that we were obliged to pay through the carrier's negligence or is the position taken by the carrier correct?

Answer: The Commission has held in several cases that a carrier is liable for damages resulting from a disregard of a shipper's specific routing instructions in cases involving the routing of shipments by the shipper via certain junctions in order to secure the benefit of lower charges via such junctions because of shipments being consigned to the delivering carrier. See Duluth Log Co. vs. Minnesota & International Ry. Co., 15 I. C. C. Rep. 627; Switzer Lumber Co. vs. T. & N. O. R. R. Co., 21 I. C. C. Rep. 290; Lathrop, Shea, Henwood Co. vs. Lehigh Valley R. R. Co., 24 I. C. C. 622, and Beekman Lumber Co. vs. L. R. & N. Co., 25 I. C. C. 171.

With respect to the question of drayage expense resulting from erroneous terminal delivery, the Commission, in Conference Ruling 509, said: "In case the consignee elects to accept the shipment at the terminal where delivery has been erroneously offered rather than insist upon delivery at the terminal designated, the shipper or the consignee is entitled to recover damages in the sum of the difference between the expense of drayage actually incurred at a reasonable charge therefor and the expense which would have been incurred if proper delivery had been effected by the carrier The carrier responsible for misrouting the shipment, resulting in a claim of this character, may reimburse the shipper or consignee entitled to reimbursement wholly at its expense without a specific order of the Commission in each case. In pursuing this course carriers must accept full responsibility for the correct application of the rule and must make reports to the Commission in accordance with its order of July 3, 1917."

### Routing—All-Rail Vs. Rail-and-Water Route

**Georgia.**—Question: Dealer makes shipment of 46 bales sole leather to customer at Atlanta, Ga., point of origin Irvington, N. J. Bill of lading covering shipment shows no routing beyond initial carrier. Via the all-rail route commodity rate does not provide for sole leather in bales, but via the rail-and-water route there was at the time shipment moved commodity rate of 96½ cents per cwt. on sole leather in bales, burlapped. I. C. C. 259, page 518.) Via the all-rail route there is commodity rate of $1.01½ cents per cwt. on sole leather in boxes or burlapped rolls. (I. C. C. 239, page 476.) Delivering carrier assessed charge on shipment at second class. Customer filed claim based on rate of $1.01½ cents, but claim was rejected by carrier on the ground that commodity rate would not apply on leather in bales. It is the belief of the customer that claim should be allowed on a basis of the rail-and-water commodity rate of 96½ cents per cwt., inasmuch as the rail-and-water route was available from point of origin, and it was the duty of the carrier to forward shipment via the route over which the cheapest rate obtained, under Conference Ruling 214 of the Interstate Commerce Commission.

We will thank you to advise your opinion as to whether or not the claim should be paid by carriers and if there has been similar cases under your observation advise what action was taken.

Answer: In Conference Ruling No. 190 the Interstate Commerce Commission said:

> Rule 70 of Tariff Circular No. 15A (Conference Ruling 214) contemplates that where rail-and-water and all-rail rates are available for a shipment the shipper shall designate which class of routing he desires and that the agent of the carrier shall secure such designation from the shipper.
>
> A shipment was delivered to a rail carrier destined to a point to which it might be forwarded via either all-rail or lake-and-rail route. No class of route was designated by the shipper. Shipment was forwarded all rail: Held, That taking into consideration the liabilities of carriers and the question of marine insurance upon water-bourne traffic, the carrier's agent did not negligently misroute this shipment.

Conference Ruling 321 reads as follows:

> In view the amendment to section 15 of the Act, paragraph b of Conference Ruling No. 214 is now amended so as to read as follows:
>
> (b) In order to secure desired delivery to industries, plants, or warehouses and avoid unnecessary terminal or switching charges, the shipper may direct as to terminal routing or delivery of shipments which are to go beyond the lines of the initial carriers; and his instructions as to such terminal delivery must be observed in routing and billing such shipments. When shipments are accepted without specific routing instructions from shipper, where all-rail and rail-and-water rates are available, the carriers's agent must have the shipper designate which of the two he wishes to use. Carriers will be held responsible for routings shown in bill of lading.

In accordance with the above quoted conference rulings, it is the duty of the agent of the carrier to secure from the shipper routing instructions where all-rail rates and rail-and-water rates are available. In the event the carrier's agent fails to secure such designation from the shipper as to which of the two routes he wishes to use, it would appear that the carrier is liable for misrouting the shipment in forwarding the shipment via an all-rail route if the charges via that route are greater than via the rail-and-water route. In other words, if it is the duty of the carrier's agent to secure routing instructions from the shipper, there cannot be, in any instance, an absence of routing instructions unless the shipper refuses to designate any route upon being requested to do so.

### Payment of Freight Charges

**Ohio.**—Question: In the past we have had a little trouble in the payment of freight bills at some of our shops not located in Toledo. The agents at these points are in the practice of drawing sight drafts on us for the collections. We have protested in vain, as they refuse to establish a credit extension great enough to allow us to pay through the regular channels by check. Some lines permit it at one station and not at another. We are therefore asking you if there is a way out, wherein we could remit by check.

Answer: The Interstate Commerce Commission, in its report in Ex Parte Docket No. 73, in re section 3 of the interstate commerce act, as amended by section 405 of the transportation act of 1920, prescribed the rules and regulations to be followed by the carrier in extending credit to shippers for the payment of freight charges. Under these regulations a carrier may relinquish possession of the freight and extend credit for a period of 96 hours only, upon taking precautions deemed by it to be sufficient to insure payment of the tariff charges within that period of time.

The difficulty you are having is evidently due to the fact that your checks for the payment of freight charges on freight delivered at your shops not located in Toledo do not reach the carrier within the period of time within which the carriers are permitted to extend credit, and therefore the carrier, in order to release its equipment, is drawing on you by sight draft for the charges in question. The only alternative of the carrier in the event you cannot make some arrangement by which the carrier will be assured of the payment of its charges within the period of 96 hours is for the carrier to hold the freight until the charges are paid, which may in certain instances result in the assessment of demurrage charges.

### Carrier's Liability for Delayed Shipment

**Illinois.**—Question: We have entered a claim against the express company covering a delay to a shipment of cut flowers which we forwarded from Chicago to one of our customers in Nashville, Tenn. The shipment was forwarded on June 10, but was not delivered until June 12, which constitutes a delay of about 24 hours. The express company signed for the shipment subject to delay, but we have contended that a 24-hour delay on a run from Chicago to Nashville is an unreasonable delay, and

therefore our claim should be entertained in the regular way. However, the express company flatly declined to settle, therefore, we are taking the matter up with you and respectfully request that you advise us your opinion.

Answer: In the absence of an express contract stipulating the time within which the carrier is to transport and deliver goods, the law implies a promise to do so within a reasonable time. Where the delay in the shipment is prolonged beyond the time within which a like shipment is usually transported between the point of shipment and the point of delivery, the burden is cast on the carrier to explain such delay and to show that it did not result from its negligence or the negligence of its connecting carriers. Failing to show such excuse, a carrier is liable for damage resulting from delay.

Whether a delay is unreasonable and whether damage resulted therefrom are questions for the jury under the circumstances of each particular case.

If the usual time for transporting a shipment between Chicago, Ill., and Nashville, Tenn., is 24 hours, we would say that a delay of 24 hours is unreasonable, under ordinary circumstances.

**Routing—No Liability on Part of Carrier in Following Shipper's Instructions**

**Oklahoma.**—Question: Please be referred to your answer to "Illinois," on page 1004, of your November 20 issue, and, while the question is not entirely clear, it seems as though there may be some modification necessary in the answer.

It is stated that the bill of lading showed the through local rate and if this means the through rate of 12½ cents per hundred, that would apply direct by the Burlington, then the Burlington has issued a bill of lading that is impossible of execution and they would be liable for protection of the rate, regardless of the fact that the shippers knew that the rate did not apply. While, of course, the shippers would be morally obligated not to make a bill of lading of this kind, still the question is one from a legal standpoint, and if the through rate of 12½ cents is shown on the bill of lading, then we believe that your answer should be amended for the benefit of any others who may have a question of this kind.

Answer: The effect of an embargo is to temporarily suspend the rates applicable via the route embargoed, so that as a matter of fact there was no rate via the C. B. & Q. Railroad direct during the period of the embargo. (See Herman Gross vs. Director-General, N. Y. & P. Ry., 58 I. C. C. 604.)

While the Commission has held, that where both routing instructions and a rate which is not applicable via any route are inserted in the bill of lading, it is the carrier's duty to obtain further and definite instructions from the consignor, and its failure to perform its duty renders it liable for any additional charges (see Union Saw Mill Co. vs. St. L. I. M. & S. Ry., 40 I. C. C. 661), assuming that a lower rate could not have been secured had the shipment been forwarded via another route than that shown in the bill of lading or the embargoed route, we are of the opinion that the carrier is not liable for charges assessed in excess of 12½ cents per 100 pounds, for the reason that the shipment moved via the cheapest available route.

**Consignee Must Accept Goods Delayed in Transit**

**New Jersey.**—Question: On November 7, 1919, we made a less-carload shipment to Houston, Tex. At the request of the consignee we started a tracer after the shipment on December 9 without result. We, therefore, filed a claim for the loss of the entire shipment on March 16, 1920. On August 26, ten months after the goods were shipped, we received a letter from the freight claim agent, advising the shipment was on hand at destination, unclaimed, requesting that we give orders for disposition. In the meantime the consignee had gone out of business.

Please advise if under the law we have the right to refuse this shipment on the grounds of conversion by the carriers.

We might also state that under Agent E. B. Boyd's I. C. C. No. US-3, "Storage Rules and Charges," rule No. 2, section B, reads as follows:

> Where shipments have been plainly marked with the consignor's name and address, preceded by the word "from," notice shall be immediately sent or given consignor of refusal of less-than-carload shipments. Unclaimed less-than-carload shipments will be treated as refused after fifteen calendar days from expiration of free time.

Please let us have your opinion on this subject.

Answer: The failure to deliver goods within a reasonable time by the carrier is only a breach of the contract of carriage and the carrier is liable for the damage incurred by reason of the delay, but the consignee cannot refuse to accept the goods on account of the unreasonable delay in the carriage and sue for a conversion.

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Authority to issue a 6 per cent, ten-year promissory note for $256,000, payable to the New York Central Railroad Company, is asked by the Kanawha & Michigan in a petition filed with the Interstate Commerce Commission. The note is to be given for a loan the proceeds of which will be used for additions and betterments and for the rebuilding of equipment.

# Miscellaneous Decisions

**Traffic Cases Recently Decided by State and Federal Courts**



## REGULATION OF COMMON CARRIERS

**Fuel Company Letting Trucks a Common Carrier:**

(Supreme Court of Arkansas.) A fuel company which let its trucks with drivers to carry goods, which was part of its regular business, was a common carrier.—City Fuel Co. vs. Torreyson, 224 S. W. Rept. 727.

**Regulation of Rates by State:**

(Supreme Court of Illinois.) While the state may authorize one of its municipal corporations to establish by an inviolable contract rates to be charged by a public service corporation for a definite term not grossly unreasonable in time, yet since such contract extinguishes the pro tanto state government's power to regulate rates, the power granted to the municipality must be clear and unmistakable.—Hoyne, State's Atty., vs. Chicago & O. P. Elevated R. Co. et al., 128 N. E. Rept. 587.

Const. art. 11, 4, providing that the General Assembly shall not grant the right to construct and operate a street railroad without consent of local authorities, neither abridges nor denies the states' right to regulate or fix the rates for street railroad companies.—Ibid.

The right and power to regulate rates for a public utility belong to the state unless clearly surrendered and delegated to some other municipality, and are a part of the police power, and the courts ought not to declare the same surrendered and delegated in absence of positive, statutory, or constitutional provisions.—Ibid.

Const. art. 11, 4, prohibiting General Assembly from granting the right to construct street railroads without local authority's consent, is limited to street railway companies, and does not apply to elevated railroads, the largest portion of whose rights-of-way is not in the streets, but across private property, which are not street railways within such section.—Ibid.

General Railroad Act, 19, requiring local consent in construction and operation of railroad across any street, does not delegate to the municipality the state's exclusive power to regulate rates, while section 24 thereof and Const. art. 11, 12, 15, clearly reserve and give to the state the right and power to establish rates and charges to be made by railroad companies.—Ibid.

Since neither the Constitution nor statutes have given the city of Chicago any authority to make an inviolable contract with any railroad company fixing fares, the city's fare contract with elevated railroad companies is not binding on the state, which may regulate the same through a commission.—Ibid.

Neither Const. art. 4, 23, prohibiting the General Assembly from relieving or extinguishing indebtedness, liability, or obligation of any corporation or individual to this state or to any municipal corporation therein, nor article 2, section 14, and Const. U. S. art. 1, 10, relating to impairment of contracts, can prevent the state in the exercise of its rate-making power from changing the rates fixed by contract between an elevated railroad and a city not expressly granted the states' rate-making power.—Ibid.

Public Utilities, Act, 41, gives the commission complete power and authority to hear, determine and fix railroad rates, and section 68 gives persons affected by such order or decision an appeal to the circuit court of Sangamon county, and appeals therefrom may be taken directly to the Supreme Court, so that such persons have a direct and adequate remedy, and the validity of the commission's acts may not be attacked by collateral proceeding by information in chancery by the state's attorney.—Ibid.

Objections that an order of the Public Utilities Commission fixing elevated railroad fares is in violation of act May 27, 1907 (Laws 1907, p. 476), fixing maximum charge, merely charges that the order is informal or erroneous, and if such objections are fatal they may be remedied on appeal, or modified on application to the commission, according to the Public Utilities Act, 67, and, in view of such adequate remedy, may not be attacked collaterally.—Ibid.

# Loss and Damage Decisions

**Cases Recently Decided by State and Federal Courts**



## BILLS OF LADING

**Order Bill—Surrender of:**

(Supreme Court of Washington.) A carrier wrongfully de-

livered goods shipped under an order bill of lading without requiring its surrender as against a bank which held the bill of lading attached to a draft purchased by it, though merely as collateral for payment of the draft.—National Bank of the Republic vs. Hines et al., 192 Pac. Rept. 899.

A bank, which purchased a draft with bill of lading attached, can recover from the carrier which delivered the property without surrender of the bill of lading, the full amount of the draft, if less than the value of the property, though it charge a portion of the amount of the draft against an existing indebtedness of its customer from whom it purchased the draft.—Ibid.

A carrier, which wrongfully delivered property without requiring surrender of the bill of lading, is liable to the holder of the bill of lading for the value of the property at the place of delivery, including the freight thereon, where the amount of the freight had been paid to the carrier.—Ibid.

A buyer of goods, who paid cash for them and directed shipment on direct bill of lading, is nevertheless not entitled to the goods as against a bank, the holder of an order bill of lading, where the seller who delivered possession of the goods to the carrier requested the order bill of lading, and transferred it to the bank, which had no knowledge of the agreement with the buyer.—Ibid.

**Order Bill Passes Title to Transferee:**

(Supreme Court of South Carolina.) Where a bill of lading is taken by the shipper making the goods deliverable to his own order, with instructions to notify another on arrival at destination and nothing appears to the contrary, the title to the goods remains in the shipper while they are in transit, and passes from him to his transferee of the bill of lading.—Liberty Nat. Bank vs. Hines, Director-General of Railroads, et al., 104 S. E. Rept. 313.

**Notice to Assignee by Carrier:**

The assignee of a bill of lading suing for conversion of a shipment of hay diverted according to orders from the assignor of the bill, without indorsement thereon, could not complain that defendant carrier did not give it notice of refusal of the person to be notified to accept the hay where it had notice of that fact from its own agent.—Ibid.

**Diversion in Transit:**

The owner of goods in transit having the right to take actual possession of them at any intermediate point on the route may divert them at any such point while in transit, and it is the duty of the carrier to deliver them to him or divert them according to his orders on presenting evidence of ownership and paying the proper charges.—Ibid.

Where diversion of a shipment of hay was ordered, but not indorsed on the bill of lading, and the hay was not delivered, but sold for charges, the title of the assignee of the bill of lading became absolute on notice that the person to be notified as indicated on the bill refused to pay a draft and take the hay, and it was its duty to pay the freight charges and take the hay, especially if the diversion was not the cause of the refusal, and the carrier was not responsible therefor.—Ibid.

**Evidence:**

Where a shipper of two carloads of hay consigned them to his own order with directions to notify a third person, and then indorsed the bills to plaintiff's assignor, who ordered a diversion of the goods, which diversion was made, but not indorsed on the bills of lading, which were returned to him, and subsequently assigned to plaintiff, and it appeared that the party to be notified refused to accept the goods, which were subsequently sold for charges, it was error to exclude parol evidence in an action against the terminal carrier as for conversion, where there was no showing that such carrier was a party to the original contract.—Ibid.

Before damages can be recovered as for a conversion of property by a carrier, there must be some evidence from which an inference may be drawn that a delict is the cause of the injury.—Ibid.

**Evidence:**

(Supreme Court of Arkansas.) In an action by a carrier of household goods to recover its charges, wherein defendant owner counterclaimed for damage, undisputed evidence held to show the loss of certain chairs and their value, so that verdict was properly directed for defendant owner.—City Fuel Co. vs. Torreyson, 224 S. W. Rept. 727.

### TO FINANCE COST OF NEW BRIDGE

Application for authority to "assume an obligation and liability, as lessee of the Cincinnati Southern Railway, to pay (as increased rental) the interest, as it becomes due, on an issue of not exceeding three million five hundred thousand dollars ($3,500,000) principal amount municipal gold bonds of the City of Cincinnati, at the rate of five per cent (5%) per annum, payable semi-annually, and to pay the further sum of one per cent (1%) per annum on such bonds to provide a sinking fund for their redemption at maturity on July 1, 1965," has been filed with the Commission by the Cincinnati, New Orleans & Texas Pacific Railway Company. The proposed transaction is necessary in connection with the construction of a new railroad bridge over the Ohio river at Cincinnati, the applicant states.

## DEMURRAGE AND RECONSIGNMENT TARIFFS

*The Traffic World Washington Bureau*

All tariffs proposing increased demurrage charges, changes in rules and terms of the average agreement, and all reconsignment and diversion tariffs were suspended by the Commission, November 30, from December 1 to March 31. The orders in the demurrage case were put forth in I. and S. Docket No. 1249, and in the reconsignment and diversion case in I. and S. No. 1250.

Suspension of the demurrage tariffs was expected. The suspension of the reconsignment and diversion tariffs, especially those pertaining to fruits and vegetables, was not expected. On the contrary, the thought was strong that the tariffs covering fruits and vegetables would be allowed to become operative.

No reasons for the suspension were given in either case. The energetic protests of shippers, and especially the division in the National Industrial Traffic League, were expected to bring about the demurrage suspension.

There is a belief that the suspension of the reconsignment and diversion tariffs was directed more against departures from the letter and spirit of the Commission's decision in regard to grain and grain products than to the showing made by the protestants against the rates and rules on fruits and vegetables. Protests against them were to the effect that they violated the spirit as well as the letter of the Commission's decisions in the handling of grain and grain products, reconsigned or diverted.

All the tariffs suspended in the cases mentioned were formulated and filed on the theory that the rates and rules therein contained would contribute to the faster movement of freight cars. Those who prepared them always repelled the suggestion that the charges might increase the revenue of the carriers, when shippers said they were holding cars longer than necessary. Shippers in their protests denied that the abuse of equipment was wholly attributable to them and argued that increases in the rates would result, not in the faster movement of cars, but in an increase in revenue through the imposition of penalties that the shippers could not avoid.

At present the demurrage rates are $2 per car per day for the first four days after free time and $5 for each day thereafter. The proposed rates are $3 for each of the first four days after free time, $6 per day for each of three days thereafter, and $10 a day thereafter.

Congestion was great at the time the proposals which have been suspended were made. Since the propositions were put forth the congestion has disappeared to a large extent.

## HEARING ON CONSOLIDATION SECTION

*The Traffic World Washington Bureau*

Commissioner Potter and Daniels and Examiner J. J. Hickey, heard argument by representatives of the railroads, December 1, in the matter of applications for authority under Section 20a of the interstate commerce act to issue securities of reorganized railroad companies.

The Commission held the hearing for the purpose of obtaining the views of the carriers as to the application of paragraph 6 of Section 5 of the act which provides, in effect, that where consolidations are effected as the result of reorganization of companies the aggregate par value of the bonds and stocks must not exceed the value of the consolidated properties as found by the Commission under the valuation section.

There is no expressed limitation in the law, however, as to the securities of reorganized companies in which no consolidations are involved. The question under consideration by the Commission was whether it would be inconsistent to apply the limitation as to consolidated properties and not as to reorganizations not involving consolidations.

Counsel for the carriers contended that Congress did not intend that the limitation as to the securities not exceeding the value of the property as found under the valuation section should apply to reorganizations where there were no consolidations. They urged that reorganization, not involving consolidation, must be effected promptly in order to obtain new capital, and that in such cases Congress did not intend that approval of the issuance of securities should await determination of the value of the property. They said consolidations could wait on the determination of value without interfering with the service to the public but that reorganizations could not be delayed similarly without injuriously affecting the ability of the carrier to serve the public.

Among those who appeared for the carriers were Alfred P. Thom, general counsel of the Association of Railway Executives; Arthur Miller, of the Kansas, Oklahoma & Gulf, and F. J. Lisman, banker of New York.

# INTERPRETATION OF TARIFFS

(Twenty-fifth of a series of articles written for The Traffic World by R. R. Lethem.)

In addition to those transit privileges which have been referred to in previous articles and the explanation made of the general principles governing the use thereof, there are a number of other privileges which are accorded shippers under tariffs filed with the Commission by the transportation companies.

About 1870 the Nashville & Chattanooga Railway, the predecessor of the Nashville, Chattanooga & St. Louis Railway, inaugurated the practice of rebilling or reshipping grain at Nashville, this being the first transit privilege in the United States, the reason for its establishment being, it is stated, to meet the competition of boats on the Cumberland River.

At present, transit privileges are applied to the movement of many commodities. Under milling-in-transit or some equivalent arrangement, grain of all kinds is milled and otherwise treated in transit, cotton is compressed, lumber is dressed or otherwise manufactured, live stock is stopped off to test the market, steel is reworked or fabricated in transit, and peanuts are cleaned or shelled in transit.

A complete list of such privileges would be difficult to assemble, but among those which are most generally used are the following:

The milling in transit of grain, hay and lumber; the concentration and reshipping of cotton, cotton linters and regins; concentration and reshipping of dairy products; reworking or fabrication of iron and steel in transit; refining in transit of various kinds of oil, such as crude petroleum, cottonseed oil, peanut oil, copra oil, sesame oil and soya bean oil; assorting and grading of wool in transit; cleaning or shelling of peanuts in transit; dipping, inspection, feeding, resting and grazing of live stock in transit, including market privilege therefor; grading, inspection, or storage of pig iron in transit; storage in transit of various commodities, such as sugar, apples, grapes, pears, beans, onions, potatoes; storage of merchandise of various sorts originating in Asiatic countries; and stoppage in transit for partial unloading of certain commodities, such as bananas, fresh meats and packinghouse products, agricultural implements, vehicles, etc.

It is, no doubt, true that the according of transit privileges has cheapened the cost of transportation and very likely the cost of manufacture, and the commercial operations of the country have, in many instances, grown up and been developed under transit privileges in a way they could not have done without the according of such privileges by the carriers.

The underlying principle of all transit arrangements is that the same commodity which moves to the transit point shall move therefrom in a more or less changed form, a transit service being based on the theory that the transportation contract has not been completed, and that the entire shipment from point of origin through the transit point or points to destination is the same in principle as if the shipment had moved through without transit.

As a rule, in the application of transit privileges, the local rate is paid on the raw material into the point of manufacture and when the manufactured product is reshipped, it is transported on a rate which would be applicable to that product had it originated in its manufactured state at that point where the raw material was received for transportation, the amount which has been paid into the mill point being accounted for in the final adjustment.

Under section 6 of the interstate commerce act the publication in a schedule and the filing of such schedule with the Commission is a requisite to the granting of any transit privilege by a carrier. All the facts and circumstances connected therewith must be clearly stated in the published tariffs so that the public generally may enjoy the benefits thereof.

In order for shippers to avail themselves of the privileges accorded under transit arrangements, they must comply with the provisions of the tariffs with respect to surrendering inbound paid freight bills covering the inbound movement to the transit point when the outbound commodities are tendered to the carrier for shipment, and must keep a record of receipts and deliveries on the forms prescribed and approved by the carriers, and must furnish affidavits as to the accuracy of such records, when required. Failing to comply with such provisions, if reasonable, a shipper may be denied the benefits of transit privileges which would have been available had he complied with the tariff provisions as to such matters, as the carrier cannot waive their observance.

A charge, in addition to the line-haul rate, is, in many cases, made for the extra service on the part of the carrier in extending to shippers transit privileges, and such compensation may include a profit in addition to the actual cost of the service.

Under the application of all transit arrangements the rate to be applied is that in effect at the time the shipment leaves the original point of shipment. This applies to through rates based on the lowest combination as well as to joint through rates, rule 5-C of Interstate Commerce Commission Circular No. 18-A providing:

> If no specific rate from point of origin to destination of a through shipment is provided and no specific manner of constructing combination rate for it is prescribed, the lowest combination of rates applicable via the route over which the shipment moves is the lawful rate for that shipment.
>
> Such combination through rate must be treated as a unit from the date of original shipment to the date of its arrival at destination and the rate applied must be the combination of the rates which exists upon the date of original shipment. All of the conditions, regulations, and privileges obtaining as to any factor in such combination rate for through shipment at the time of original shipment upon such combination through rate must be adhered to and cannot be varied as to that shipment during the period of transportation of such shipment to its final destination. A local or proportional rate in can not be absorbed, diminished or affected by any out rate not in effect at the time when the traffic moved upon such local or proportional rate.

The Commission has uniformly held that, except to remedy unjust discrimination, concentration and other transit privileges cannot have retroactive effect—that is, the privilege must be one that is in existence at the time the shipment leaves point of origin—and that reparation cannot be awarded in such cases.

We will now suppose that we are engaged in the produce business at Springfield, Mo., which point is perhaps the largest concentration point, in respect to the volume of butter, eggs and poultry reshipped, in the United States.

At various times we purchase at local stations on the St. Louis-San Francisco Ry. in the vicinity of Springfield, small lots of butter, eggs and poultry, which are forwarded to Springfield at the less-than-carload rates.

We will assume that we have purchased at Hoxie, Ark., a quantity of live poultry weighing 10,000 pounds; at Garfield, Ark., 8,000 pounds of live poultry, and at Winslow, Ark., 5,500 pounds of live poultry, the shipment from Hoxie moving August 28, 1920, that from Garfield, September 1, 1920, and that from Winslow, September 3, 1920.

In the absence of a transit privilege such as we have under the rules and regulations contained in St. L.-S. F. Ry. Tariff No. 709-K, I. C. C. No. 7679, the total charges on shipments made from Springfield would consist of the less-than-carload rates into Springfield from each of the three points of origin applied on the quantity shipped therefrom plus the less-than-carload rate or the carload rate out of Springfield, depending on whether or not minimum carload shipment is forwarded from Springfield.

However, by reference to items 10 and 30 of St. L.-S. F. Ry. Tariff No. 709-K, I. C. C. No. 7679, we find that, under what is termed a concentration privilege, we can ship into Springfield less-than-carload quantities of live poultry, butter, or eggs for the purposes set forth therein and reforward the shipments in carload lots under the basis of concentration rates set forth in items 45 and 50 of that tariff, item 10 providing that shipments of butter, eggs, and poultry (live or dressed), may be concentrated at stations on the St. L.-S. F. Ry. in Arkansas, Kansas, Missouri and Oklahoma, when originating at stations on the St. L.-S. F. Ry. in Arkansas, Kansas, Missouri and Oklahoma, and at certain points in Texas.

Under the application of the basis contained in item 45, of the above tariff, a readjustment of the charges on the shipments into the concentrating point will be made through claim channels to the difference between the carload rate from point of origin to St. Louis proper (on the commodity forwarded from the concentrating point) and the carload rate in effect on date of the shipment from the concentrating point to St. Louis proper, plus 10 cents per 100 pounds, subject to a minimum rate of 13½ cents per 100 pounds and a minimum charge of 25 cents per individual consignment to the concentrating point.

Under the provisions of item 37, only one stop will be allowed for concentration or storage purposes, except that concentrated carload shipments forwarded from a concentration point may be stopped once in transit for storage when authorized by tariff, while, under the provisions of item 60, shipments may be held not to exceed 12 months from the date of the paid freight bill for the inbound shipment to the first stopover point.

In accordance with item 80, original freight bills, scrap freight bills or tonnage credit slips (the latter term being applied to freight bills or credit slips representative thereof after a part of the original amount covered by the freight bill has been forwarded from the transit point), representative both in character of the commodity and tonnage forwarded, must be surrendered to the carrier and such surrendered freight bills, scrap freight bills, or tonnage credit slips must bear the same date as or date prior to the date of the outbound billing from the concentrating or storage point.

In accordance with item 90, concentration or storage privileges are allowed on an outbound weight equal to the actual inbound weight, less the shrinkage or loss in handling as provided for in item 85, the deduction for shrinkage or loss in handling being considered as non-transit, and cancellation thereof from slips must be made to cover same at the time of the filing of the concentration claim. This item further provides that the contents of one or more cars from the same or different points of origin into the storage or concentration point may be billed therefrom in one or more carloads, and vice versa, subject to carload minimum weights, and that the minimum weight of the shipment out of the storage or concentrating point may

be made up altogether of stored or concentrated commodities or mixed carloads of such commodities and non-transit shipments. The excess of the actual inbound weight over the outbound weight from the storage or concentration point will be credited by the issuance of tonnage credit slips, and such credit slips may be applied against subsequent shipments.

Refund will only be made on the actual weight of the transit portion reshipped, and when articles are shipped from storage or concentrating point in containers and representative freight bills or tonnage credit slips for the products are surrendered to cover weight of the products and containers, the same rates will apply on the containers as on the product reshipped.

In order to secure the benefits of the concentration or storage privileges accorded under St. L.-S. F. Ry. Tariff No. 709-K, I. C. C. No. 7679, shippers must keep a complete and accurate record of transit and non-transit tonnage received at the transit point and reforwarded therefrom and must make, as of March 31 of each year, or such other date as the carrier may designate, a statement that will show the quantity of each commodity on hand and the quantity of each product or commodity entitled to concentration or storage privileges, as represented by unexpired freight bills or tonnage credit slips on hand. If unexpired freight bills or tonnage credit slips represent greater tonnage than is actually on hand, the surplus freight bills or tonnage credit slips will be canceled.

Now, let us apply to concrete examples the rules of St. L.-S. F. Ry. Tariff No. 709-K, I. C. C. No. 7679, outlined above.

We have assumed that there was shipped into Springfield from Hoxie 10,000 pounds of live poultry; from Garfield, 8,000 pounds, and from Winslow, 5,500 pounds, on August 28, 1920, September 1, 1920, and September 3, 1920, respectively—a total of 23,500 pounds. On the shipment from Hoxie a rate of 130½ cents per 100 pounds as published in F. A. Leland's Tariff No. 34-H, I. C. C. No. 1268, has been paid; on the shipment from Garfield, charges based on a rate of 81½ cents per 100 pounds as published in the same tariff have been assessed, while on the shipment from Winslow a rate of 110 cents per 100 pounds as per the same tariff has been collected.

The carload rate on dressed poultry from Hoxie to St. Louis, the commodity which is being forwarded from Springfield, the transit point, is 76½ cents per 100 pounds, as published in F. A. Leland's Tariff No. 34-H, I. C. C. No. 1268. The carload rate on dressed poultry from Springfield, the concentrating point, being 59½ cents per 100 pounds, as per E. B. Boyd's Tariff No. 18-J, I. C. C. No. A-1069, the difference between the rate from that point and the rate from Hoxie is 17 cents per 100 pounds. Adding to this figure 10 cents per 100 pounds, in accordance with item 45 of St. L.-S. F. Ry. Tariff No. 709-K, I. C. C. No. 7679, we have a figure of 27 cents per 100 pounds; and, this being in excess of the minimum rate of 13½ cents per 100 pounds prescribed in item 45, of the above referred to tariff, this is the amount to which the charges on the inbound less-than-carload shipment from Hoxie to Springfield will be reduced.

From Garfield to St. Louis, the carload rate on dressed poultry being 76½ cents per 100 pounds, as per F. A. Leland's Tariff No. 34-H, I. C. C. No. 1268, the difference between the rate from that point and the concentrating point is also 17 cents per 100 pounds, to which is to be added 10 cents per 100 pounds, a total of 27 cents per 100 pounds, this being the figure to which the charges on the inbound less-than-carload shipment from that point will be reduced.

From Winslow to St. Louis the carload rate on dressed poultry is 84½ cents per 100 pounds, as per F. A. Leland's Tariff No. 34-H, I. C. C. No. 1268; the difference between the rate from that point and the concentrating point is 25 cents per 100 pounds, which figure, plus the 10 cents per 100 pounds concentrating charge, provided for in item 45 of St. L.-S. F. Ry. Tariff No. 709-K, I. C. C. No. 7679, is the amount to which the charges on the inbound less-than-carload shipment from Winslow will be reduced.

The effect of the reduction of the inbound charges to the basis provided for in item 45 of St. L.-S. F. Ry. Tariff No. 709-K, I. C. C. No. 7679, is to give the shipper a carload rate on a less-than-carload shipment into the transit point plus a transit charge of 10 cents per 100 pounds. This arrangement has been worked out in order to encourage the development of the production of the commodities covered by the tariff referred to, and has had the desired effect.

In accordance with item 85 of St. L.-S. F. Ry. Tariff No. 709-K, I. C. C. No. 7679, a deduction of 13 per cent from the actual weights shown on inbound freight bills must be made on account of shrinkage or loss in handling when the inbound shipments consist of live poultry in coops and the outbound carload shipment consists of dressed poultry, in packages.

Inasmuch as the total of the inbound less-than-carload shipments amounts to 23,500 pounds, we can, by using the total weight represented by the expense bills covering those shipments, reship 20,445 pounds at the carload rate of 59½ cents per 100 pounds, the carload minimum governing this rate being 20,000 pounds. Under the provisions of item 60, the carload shipment from Springfield can be made within twelve months from the date of the inbound paid freight bills covering the movement into that point.

However, inasmuch as the date of the movement out of the concentrating point under item 45 governs the rate to be used in arriving at the difference between the carload rate from the point of origin and the concentrating point, we will, in order to apply the carload rate of 59½ cents out of Springfield, referred to above, assume that the outbound shipment from Springfield was made November 21, 1920.

In the event the shipment in question has been consigned to a point beyond St. Louis, as, for instance, Chicago, or some point on the Missouri River or west thereof, say, to Kansas City, the same procedure should be used in arriving at the rate into the transit point, to which figure the charges on the less-than-carload shipments are to be reduced, as in the case of a shipment consigned to St. Louis; that is, St. Louis is the base point to be used in all instances in arriving at the figure to be used in basing the charges on the shipments into the concentrating point. So that, after determining, by the method outlined above, the amount to be used as the basis for the refund on the inbound less-than-carload shipments, it is only necessary to ascertain the carload rate from concentrating point to destination, applicable on the commodity shipped out of the concentrating point to arrive at the proper charges to apply on any shipment, regardless of the destination.

If the inbound less-than-carload shipments originate at points in Missouri, Oklahoma, or Kansas, a different basis from that outlined above is to be used in arriving at the charges to be applied in final adjustment of the inbound less-than-carload shipments into the concentration point. If the movement out of the concentrating point is an interstate movement, the basis to be used is that provided for in item 50 of St. L.-S. F. Ry Tariff No. 709-K, I. C. C. No. 7679. Under the provisions of this item, St. Louis is the base point, as in the case with shipments moving from the concentrating point which originate in Arkansas and Texas; but, instead of the minimum rate into the transit point being 13½ cents per 100 pounds, it is 17 cents, and, furthermore, the carload rates from the concentrating point and the point of origin, in effect on the date of the shipment from the point of origin and not those in effect on the date of the shipment from the concentrating point, as in the case of shipments originating at points in Arkansas and Texas, are to be used in arriving at the difference which, together with the concentrating charge of 10 cents per 100 pounds, constitute the basis for the adjustment of the charges on the inbound less-than-carload shipments on the reshipment of the same in carload lots from the concentrating point.

Item 45 of St. L.-S. F. Ry. Tariff No. 709-K, I. C. C. No. 7679, which provides the basis for arriving at the charges to be applied on the inbound less-than-carload shipments, when reforwarded in carload lots from the concentrating point, in providing for the application of the rates in effect on the date of the shipment from the concentrating point instead of the date of the inbound less-than-carload shipment from point of origin to concentrating point is in error, for the universal rule with respect to transit privileges is that the rates in effect on the date of the movement from original point of shipment are to be used. However, inasmuch as no change was made in the rates as to the shipments referred to in the example given above, between the date of the inbound less-than-carload shipments and the date of the outbound carload shipment from the concentrating point, the error does not affect the result.

In addition to permitting the concentration of less-than-carload shipments, St. L.-S. F. Ry. Tariff No. 709-K permits the forwarding of carload shipments of live poultry to the concentrating point and the reforwarding therefrom of dressed poultry in carload lots or the forwarding of carload shipments of eggs in the shell to the concentrating point and the reforwarding of dried, desiccated, canned or frozen eggs in carloads. On such shipments the concentrating basis as provided for in items 45 and 50 may be applied.

St. L.-S. F. Ry. Tariff No. 709-K, under item 35, also provides for storage in transit of carload shipments of the commodities named in item 30.

Assume that we have, August 27, 1920, forwarded to Springfield a carload shipment of eggs, packed in accordance with the packing requirements shown in Western Classification No. 56, R. C. Fyfe's I. C. C. No. 14, weighing 20,000 pounds, from Rogers, Ark. Under the provisions of item 60 this shipment can be held at Springfield, the storage point, for a period not exceeding one year from the date of the paid freight bill for the shipment into the storage point and can be reforwarded therefrom at any time within that period at the basis of rates named in item 55, which item provides that the carload rate from the point of origin or from the storage point, which ever is the higher, to final destination, in effect on date of shipment from point of origin, plus a charge of 3½ cents per 100 pounds, with a minimum of $7 per car, will be applied.

If the shipment is reforwarded from Springfield November 28, final settlement through the accounting or claim department will be made on basis of 80 cents per 100 pounds, the rate from

Rogers, the point of origin, being 76½ cents per 100 pounds, as per F. A. Leland's Tariff No. 34-H, I. C. C. No. 1268, to which has been added the storage charges of 3½ cents per 100 pounds in accordance with item 55 of the storage tariff. The rate from Springfield being 59½ cents per 100 pounds, as per E. B. Boyd's Tariff No. 18-J, I. C. C. No. A-1069, and the rate from Rogers being 76½ cents per 100 pounds, the rate from the latter point must be used, as it is the higher of the two rates.

Item 55 further provides that where concentration and storage privileges are both taken, the charge for each privilege will be applied.

Another transit privilege, similar in some respects to that outlined above, is the concentration and reshipment of cotton, cotton linters and regins, but the others referred to at the beginning of this article are very similar in their operation to those that have been explained in former articles, and for this reason no further explanation will be made.

Under stopping-in-transit privileges, a charge, which was usually $5 per car prior to the increases under Ex Parte Docket No. 74, is made for the privilege, while under the storage-in-transit tariffs the rules and regulations are very similar to those governing the storage of poultry and eggs.

## SILK CASE BEFORE SUPREME COURT

*The Traffic World Washington Bureau*

The question whether the railroads, by means of amendments to the consolidated classification, can exclude silk and artificial silk from the benefits of freight transportation, has reached the supreme court of the United States, on certification from the circuit court of appeals. The certification was made on account of the possibility of diverse decisions by the courts in different districts, which would have the effect of bringing about the discriminations the interstate commerce law was intended to abolish. As docketed in the supreme court the case is known as No. 424, Director-General of Railroads et al. vs. The Viscose Company.

Judge Thompson, in the district court in Philadelphia, enjoined the railroads from excluding silk and artificial silk from the benefits of transportation. In the southern district of New York, Judge Mayer refused an injunction but he was reversed by the circuit court of appeals. For a while, therefore, the Pennsylvania, for instance, in obedience to the mandate of the court accepted artificial and real silk, in disobedience to the terms of its tariff publication known as consolidated classification, while in New York, for a time, it declined to receive either silk or artificial silk.

In a brief filed by F. Markoe Rivinius, Henry Wolf Bikle, Frederic D. McKenney and Theodore W. Reath, counsel for the railroads take the position that the question is for the exclusive disposition of the Interstate Commerce Commission, whether the matter be considered as one of classification or of a regulation. The attorneys for the railroads set forth the fact that unless the courts allow the Commission to deal with the matter exclusively, there is a likelihood of diverse decisions leading to confusion and discriminations. They take the position that the question is solely one of administration to be handled by the Commission and that, in effect, when the courts took a hand in the matter they were invading the field of the Commission's jurisdiction.

As to the Viscose Company's contention that elimination of silk and artificial silk from the classification, they said that that did not necessarily follow; that the Commission could order the establishment of commodity rates; and that the only necessary effect would be the elimination of the transportation of silk and artificial silk on class rates.

"The present case affords an impressive argument in favor of the Commission's authority," says the brief. "For, while the District Court in the present case asserted jurisdiction and required the carriers, parties to this case, to continue the transportation of silk under class rates, Judge Mayer, in the District Court of the United States for the Southern District of New York, denied court jurisdiction, leaving the regulation in effect. The result was that the Pennsylvania Railroad Company was required by the injunction of Judge Thompson to violate its tariff and accept shipments from the Viscose Company under class rates, while at the time in obedience to its tariff provisions it was declining such shipments when tendered by Cheney Brothers and the other parties to the New York case.

"The decision of Judge Mayer was reversed by the Circuit Court of Appeals for the Second Circuit, Hough, C. J., dissenting (Cheney Brothers vs. Director-General, 266 Fed. 310, 1920), and the Circuit Court of Appeals for the Third Circuit in the case at bar has certified the question of jurisdiction to this Court.

"It was precisely distractions of this sort that were anticipated by this Court in the various cases which have sustained the exclusive jurisdiction of the Interstate Commerce Commission of issues of this character.

"If this issue were to be tried by the Court, what would be the test of the propriety of the rule challenged by the Viscose Company? Surely it will not be suggested that a carrier must transport every commodity. Obviously an express company could not be required to transport a harvesting machine. Nor is a railroad obligated to transport an elephant. It has long declined to transport in freight service bank bills, coin or currency, deeds, drafts, notes or valuable papers, jewelry, precious metals, or articles manufactured therefrom, or other articles of extraordinary value. Surely it cannot be said that, because it has transported a commodity, a carrier is forever bound to continue to transport it, irrespective of possible changes in transportation or other conditions. Necessarily, it must, subject to some principle, be able to define the class of articles it declines to carry, and be able to change this class from time to time as conditions change. Is not the governing principle that of reasonableness?

"It will doubtless be conceded that the office of assigning rate classes to particular articles is exclusively an administrative function of the Interstate Commerce Commission. Determining the reasonableness of rates is settled as an administrative function with which the Courts will not interfere. But Judge Ward in the Cheney case in the Circuit Court of Appeals for the Second Circuit, Cheney Bros. vs. Railroads, 266 Fed. 310 (1920), and Judge Thompson in the case at bar, Viscose Company vs. Director-General, 263 Fed. 726 (1920), had the view that classification of certain articles as for carriage and of other articles as not for carriage by freight raises a question of law. Thus Judge Ward bases his decision upon the 'elemental duty of the common carrier to accept and carry all goods usually carried' and upon the statement that 'silk is a form of merchandise which has been carried by the companies for many years.' Accordingly, he held that the complaint 'is not of a question of rates, fares, charges, classifications, regulations or practices or changes therein, which would be an administrative subject within the cognizance of the' Commission 'but a permanent prohibition of the carriage of silk at all, which is, we think, a judicial question clearly within the cognizance of the courts.' And Judge Thompson, referring to the cancellation of ratings on silk, declared that 'plaintiff's product is not classified. It is excluded from classification' (263 Fed. 728). He also decided that if the carrier excluded a given article from the classification and the class rates, then that exclusion would present a question of law for the courts.

"That the District Judge in the case at bar was undertaking the performance of an administrative function is emphasized by the length to which he found it necessary to go in formulating the injunction decree. The decree requires the carriers to accept from the plaintiff, artificial or fibre silk for transportation under classification which existed prior to the effective date of said Supplement No. 2 to Consolidated Freight Classification No. 1, to wit, February 29, 1920, or under such other classifications as may hereafter be legally put into effect under proper authority of law (Transcript, page 3). This last phrase has the affirmative effect of requiring the carriage of these articles under present and future classifications, and seems to exclude the possibility of the Interstate Commerce Commission ever exercising its function, after hearing, to order the carriers to publish joint rates and through routes for these articles by a commodity tariff: see Section 15 of Commerce Act. As in a number of the cases which have reached this Court, the practical effect of the injunction order is to determine a rate matter and exclude the Commission. And the effect of the injunction order was to restrain the operation of a document filed with the Commission as a part of the classification and rules and to reinstate class rates by injunction."

## BILL OF LADING CASE

*The Traffic World Washington Bureau*

The uniform domestic part of the bill of lading case (No. 4844) has been re-opened and a further hearing will be held by Commissioner Woolley at the Great Northern Hotel, Chicago, 10 a. m., December 16. The reasons for the further hearing, as set forth in the Commission's order are as follows:

Whereas, The Commission by its report and order in Bills of Lading, 52 I. C. C., 671, prescribed the form and substance of a uniform domestic bill of lading for issuance by carriers covering shipments transported in interstate commerce, which said order has been indefinitely postponed by the Commission.

And Whereas, It appears that changes in bills of lading are rendered necessary by the provisions of the Transportation Act, 1920, approved subsequent to the issuance of said report and order;

And Whereas, The Commission has received informal criticisms of and suggested changes in the conditions of the domestic bill of lading now in use by carriers in Official and Western classification territories, and it appearing desirable that further hearing be held respecting the form and substance of the uniform domestic bill of lading proposed by carriers and submitted to the Commission in prior proceedings in this investigation;

It is ordered, That this proceeding be, and it is hereby, reopened for further hearing with respect to the form and substance of said proposed uniform domestic bill of lading, such hearing to be held before Commissioner Woolley at the Great Northern Hotel, Chicago, Illinois, commencing at 10 a. m., December 16, 1920.

This further hearing puts off the day when the Commission might have issued a supplemental report bringing its decision in 52 I. C. C. 671, down to date and into compliance with the amendments in the transportation law, chief of which are making it clear that carriers by water are to have all the benefits of the Harter act and other laws enacted for their protection, and making two years and one day from the time a carrier has

given notice of the disallowance of a claim for loss or damage the limit within which the claimant must file suit for recovery of money the carrier has declined to pay.

Largely, the re-opening is due to the bill of lading committee of the National Industrial Traffic League, of which Frank T. Bentley is chairman. That committee took up the subject at the instigation of A. D. Phillips, chairman of the bill of lading subcommittee of the traffic committee of the Rubber Association of America and some other shippers who heard that the Commission was about to issue a supplemental report based on data gathered in prior hearings. They suggested that further hearings be held. Mr. Bentley forwarded to the Commission a carefully considered memorandum, prepared by Mr. Phillips, in which the latter pointed out objections to the form of bill of lading now in use by the carriers in official and western classification territories.

That form was put into effect by the carriers in supplement No. 9 to Consolidated Classification No. 1. It is their idea as to what is required by the law, including the amendments to the interstate commerce law made by the transportation act. Mr. Phillips treated that form as having been approved by the Commission because it is in effect and the form is in use.

Mr. Phillips made a particular point of the fact that the carriers, in that part relating to loss or damage caused by strikes or riots, do not make plain that the liability of which they may rid themselves is the liability for loss resulting from delay. He claims that the law makes them liable for all damages arising from strikes or riots except the losses that may result from failure to carry with reasonable dispatch.

Another point made by him is that the language of the bill is such that the freight claim agent can argue that, after a carrier has put goods into a public warehouse, it is absolved from all liability when, as a matter of fact, it is liable as a warehouseman.

A suggestion made by him is that the language of paragraph 2 of section 2 be so revised as to make it certain that the carrier is obligated to carry the goods covered by the bill "with such reasonable dispatch as the character of the goods demands" and that the burden to prove freedom from negligence in such cases is on the carrier.

Still another point made by him is that there is no such clearness in the bill as will make it plain that claims for loss and damage are conditions precedent to recovery only when the loss or damage is caused by something other than negligence, and that claims caused by negligence may be prosecuted without the filing of a notice within the time set forth in the bill.

Among the men at the Commission who have been handling the subject it has been suggested that several of the points made by Mr. Phillips have been covered in the original report and that other points probably would have been covered in the supplemental report which will now be held up on account of the re-opening and further hearing.

The Commission has been moving cautiously and uncertainly in the matter because of the litigation begun by the Alaska Steamship Company and nearly all the big railroads in which the question of the power of the Commission to prescribe forms of bills of lading was raised. The Supreme Court dismissed the case on the ground that the transportation act had so changed the law that the case had become moot. Those who have been handling the matter are inclined to believe that the court could have disposed of the fundamental question of power without paying any attention to the changes in the law made by the transportation act. They cannot see how that act changed the fundamental question.

The Commission is uncertain as to the attitude of the carriers since the amendments to the law. Since they have contended that the Commission has not the power to prescribe bills of lading, they have filed supplement No. 9 to Consolidated Classification No. 1, in which it is assumed they have embodied what they think will be a compliance with the transportation act, the McCaull-Dinsmore decision and the amendment to the interstate commerce law fixing two years and one day, after notice of disallowance of a claim, as the time in which a shipper must bring his suit for the recovery of money, if he is dissatisfied with the action of the claim department of a particular carrier. The form of the bill prescribed in that supplement does not pretend to be in conformity with the Commission's decision in 52 I. C. C., 671.

## ALLOWANCES FOR SWITCHING

*The Traffic World Washington Bureau*

At least one attorney for the railroads believes the Commission has entered on a new policy with regard to allowances by railroads to shippers who do switching and spotting for themselves. The believer is R. W. Barrett, attorney for the Lehigh Valley, who appeared before the Commission's suspension board November 20 to object, on behalf of all carriers serving Buffalo, to a suspension of tariffs filed by them canceling switching and spotting allowances to the Buffalo Union and Hanna furnace companies, and the Wickwire-Spencer Steel Corporation. The cancellation tariffs, eleven in number, were prepared under the option given in the Donner Steel Company case, directing them to remove a discrimination caused by allowances to the companies mentioned, and refusal of allowance to the Donner Steel Company.

On the ground that the proposed cancellation of the allowances would be a most drastic thing in that it would upset an adjudication made by the Commission in the Buffalo Union case, and not result in a removal of the discrimination against the Donner company, John Lord O'Brien and F. C. Slie asked for a suspension of the tariffs, which otherwise would become effective on December 1.

The allowance to the Buffalo Union, the property of which is now leased by the Hanna Furnace Company, is and for a long time has been, 90 cents a ton. When the Commission decided that case, it allowed reparation to the complainant on the ground that it had been damaged by the fact that its competitors in the sale of pig iron in Cleveland, Pittsburgh and other parts of the eastern part of C. F. A. and western part of trunk line territories, and especially the Cleveland Furnace Company at Cleveland, had received such allowances from the carriers participating in the traffic at Buffalo, while the allowance had been denied to the complaining furnace company.

In his reply to that suggestion, Mr. Barrett called attention to the fact that the order in the Buffalo Union Furnace case expired long ago and that in a long line of cases decided in the last nine months, the Commission has declined seemingly to consider the facts as to allowances outside of the particular little district in which the plant of the complainant was located. He proceeded upon the assumption that the Commission, in those cases, had evinced a determination to "clean up" the allowance question wherever it might arise, regarding each district as a unit, and wholly disregarding the practices of the same carriers in other districts. He said Philadelphia had been "cleaned up;" that the Commission in considering a case at Bethlehem, Pa., had declined to consider practices at Philadelphia.

By way of answer to that suggestion, Mr. O'Brien said he did not care to go into the merits of the matter, but to confine himself to the narrow question whether the Commission had given the carriers warrant for disregarding the principles laid down by Commissioner McChord in disposing of the Buffalo Union case, in which it specifically called attention to the fact and based its decision thereon, that there was competition between the Buffalo Union and the Cleveland furnaces in the sale of pig iron.

Mr. Barrett said that ninety cents a car was not a factor in the competition between the furnaces, because the differences in rates on pig iron from Buffalo and Cleveland to New York have increased a dollar a ton. He insisted that the per car allowance of ninety cents would not be a factor in the competition for contracts.

In the decision in the Donner case Mr. Barrett contended the Commission specifically ruled that the carriers had performed their whole duty when they placed the cars on the interchange tracks and that therefore the continuance of the ninety cents per car allowance to the protesting furnaces would be in the nature of a gratuity for the performance of a service that was not for the benefit of the railroads.

Chairman Crosland of the board, reading from a Lackawanna tariff, called attention to the fact that the carrier considered that the furnace company involved was performing a service for the carrier in switching from one plant to another, and gave that as a reason for making the allowance.

"The Lackawanna thought that that was a carrier service until the Commission, in this Donner case, held otherwise," said Mr. Barrett. "It told the Lackawanna that it was wrong, and now we are proposing to correct the wrong."

Mr. O'Brien said that even if the Commission permits the railroads to cancel the allowances at Buffalo as proposed, Buffalo will not be "cleaned up" as contended by Mr. Barrett, because the railroad in which the Lackawanna Steel Company has a proprietary interest will still be receiving an allowance or division for spotting and switching for the industries on its rails, one of which is the furnace of the proprietary company. Retorting to that suggestion, Mr. Barrett said that the trunk lines do not make divisions with that railroad for performing switching and spotting within the plant inclosure of the Lackawanna Steel Company. Earlier in the hearing he said to Mr. O'Brien that he was not going to make any use of the fact that at one time some of the industrial roads involved in the operations for which the trunk lines now propose making no allowance, were incorporated and held themselves out to be common carriers.

### T. AND O. C. NOTE

The Toledo & Ohio Central has filed a petition with the Commission asking approval of the issuance of a note for $214,000 to the New York Central. The note will run for ten years at 6 per cent. The note is to be issued for a loan the proceeds of which will be applied to the cost of additions and betterments to roadway and structures and equipment.

# Personal Notes

The Reliable Coal & Mining Company announces that A. E. Lee, formerly general freight agent for the Chicago & Alton Railroad, has been elected vice-president of the company, which acts as sales agent for six mines in the Springfield, Ill., district and one Indiana mine.

The Chesapeake & Ohio Railway Company and the Chesapeake & Ohio Railway Company of Indiana announce that Oscar E. Lowry is appointed assistant general freight agent, Richmond, Va.; C. F. O'Donnell is appointed commercial agent, Richmond, Va.; P. G. Murrell is appointed traveling freight agent, Eastern General Division, Richmond, Va.

Joseph G. Kerr has been appointed assistant general freight agent of the Louisville & Nashville Railroad Company, with headquarters in Louisville. He began service with the L. & N. in 1903 as stenographer in the freight claim department at Louisville. In October, 1918, he went to Washington as traffic assistant to the Director of Traffic, U. S. Railroad Administration, and on the return of the railroads to their owners he returned to Louisville as assistant to Vice-President A. R. Smith, representing the road in rate litigation before the state and interstate commissions. His appointment as assistant general freight agent is in the nature of a promotion to fill a newly created position.

Jos. P. O'Donnell is appointed general agent of the San Antonio, Uvalde & Gulf Railroad, Dallas, Tex.

H. A. Benjamin is appointed general freight and passenger agent of the Waterloo, Cedar Falls & Northern Railway Company, with office at Waterloo, Ia.

F. E. Godfrey is appointed assistant general freight agent of the Southern Railway System, with headquarters at Cincinnati.

J. F. Van Riper, commercial freight agent of the United Fruit Company, New York, died November 21.

Max Thelen has resumed the general practice of law in San Francisco.

E. L. Christian is appointed traveling freight and passenger agent of the El Paso & Southwestern System and Morenci Southern Railway Company, with headquarters in El Paso, Tex. W. H. Morris is appointed contracting agent, with headquarters in El Paso.

The Clarksburg (W. Va.) Chamber of Commerce has organized a freight traffic bureau and James T. Crutchfield has been appointed manager.

The Acme Transport Company, Inc., foreign freight forwarders, with sales offices in New York, have recently established a branch office in Chicago, under the management of Thomas S. Burns, vice-president of the company. The New York office will remain under the direction of Arthur T. Blackman, president of the Acme Transport Company.

## DOINGS OF THE TRAFFIC CLUBS

The Traffic Club of Chicago will have its fourteenth annual dinner in the banquet hall of the Hotel La Salle the evening of December 16. At a business luncheon, November 30, resolutions were adopted by the club against any public adjustment board for the hearing of disputes between common carriers and their employes. There was an address by John M. Glenn, secretary of the Illinois Manufacturers' Association, and also brief remarks by President Dalton and C. L. Lingo before the resolutions were adopted. The second of the club's "get-together" traffic discussions will be held in the club rooms next Tuesday evening. The subject will be "Claims, with Special Reference to the McCaull-Dinsmore Decision." The matter will be presented from the railroad point of view by two or three railroad men qualified to speak on the subject and from the point of view of shippers by two or three of their representatives who are also well qualified. There will then be a general discussion. This was the plan followed at the initial meeting, when the "spotting charge" was the subject. The indications were that the plan for these meetings would be exceedingly popular. There were about 200 members and guests present and the debate was spirited. William Hodgdon, traffic manager, Pennsylvania System, Northwestern Region, and James Webster, assistant traffic manager, New York Central Railroad Company, made the formal presentation for the carriers and C. B. Heinemann followed for the shippers. The discussions are informal and friendly and the understanding is that they are family affairs, the remarks of those who speak not to be published. Those who attended the first discussion were enthusiastic, not only on account of the interest in this particular meeting, but with respect to the opportunity that seemed to be afforded for useful consideration in this manner of matters of importance to those who make a business of traffic.

The Traffic Club of Baltimore will have as its speaker at its meeting December 7 the governor of Maryland, who will address the meeting on the subject, "Some of the State's Problems." He will also touch on traffic problems.

At the luncheon of the Transportation Club of Detroit November 20 a talk was given by Capt. Gipsy Pat Smith, bearing on his experiences in the trenches.

The Syracuse (N. Y.) Traffic Efficiency Club has changed its name to the Traffic Club of Syracuse. The president is C. R. Berry, and the secretary, W. J. O'Neil. The speaker at the meeting November 18 was C. L. McIntyre, president and general manager of the McIntyre Trucking Company, Inc. Mr. McIntyre spoke on "Motor Transportation as Applied to Syracuse."

The Traffic Managers' Division of the Manufacturers' Club of Mansfield, O., has been organized. The officers are W. H. Gugler, chairman, and Wellington T. Leonard, secretary.

The Transportation Club of Louisville at its dinner, December 8, will have as guests and speakers Col. W. W. Harts, division engineer, U. S. Army, Cincinnati; E. L. Douglass, president, Hazard Coal Operators' Exchange, Cincinnati, and W. L. Mapother, executive vice-president L. & N. R. R., Louisville. They will discuss the coal question from the angles of production and transportation, by rail and by water.

The Transportation Club of San Francisco will have its "Christmas Jinks" in the Palace Hotel ballroom, Wednesday evening, December 22. There will be a dinner and entertainment. New Year's Eve in the clubrooms there will also be a dinner, entertainment and dancing.

## SHORT LINE TRAFFIC MANAGERS

*The Traffic World Washington Bureau*

Appointment of three traffic managers whose duties will be to serve short lines in traffic matters and to look particularly into the question of divisions with a view to obtaining larger divisions for the short lines has been made by the American Short Line Railroad Association.

R. A. Belding, formerly with the traffic department of the Chicago Great Western, will be the traffic manager for the Eastern territory; J. A. Stryer, formerly manager of the Lincoln, Dublin & Savannah, will be traffic manager for the Southern territory; and F. C. Reilly, formerly freight traffic manager of the Frisco, will be traffic manager for the Western district. Mr. Belding and Mr. Stryer will have offices in Washington with the short line association, and Mr. Reilly will have his office at Chicago. Mr. Reilly, owing to a leave of absence obtained by James Berlinget, manager of the labor department of the association at Chicago, will have charge of the Chicago office.

### FREIGHT CLAIM PREVENTION

The American Railway Association announces that the following have been selected, each with a title of special representative, Freight Claim Division, to give their entire time to the association's endeavors toward the reduction of freight losses and damages, under the supervision of the committee on cause and prevention of the freight claim division: Fred E. Winburn, Joe Marshall, Albert L. Green. They were previously connected with the Atlanta & West Point Railroad, Missouri, Kansas & Texas Ry. of Texas and the New York Central Railroad, respectively.

## WANT BETTER L. & N. FACILITIES

*The Traffic World Washington Bureau*

Application has been made to the Commission by the Hazard Coal Operators' Exchange, Harlan Coal Operators' Association and the Southern Appalachian Operators' Association, whose mines are in Kentucky, for an order requiring the Louisville & Nashville to provide itself with additional transportation facilities consisting of tracks, engines and coal cars, "in such manner and to such extent as will afford adequate transportation for the coal produced on its lines and as the Commission may determine to be necessary therefor."

In their complaint, J. V. Norman and George F. Graham, attorneys for the complaining operators, asserted that for many years they had urged on the executive officers of the Louisville & Nashville the necessity of providing additional transportation facilities to move the constantly increasing coal traffic on its lines, especially in eastern and southeastern Kentucky, and had had many conferences with them to that end, but that the railroad company had failed and refused to make such necessary provisions.

This application, in the form of a complaint on the formal docket, was brought under paragraph 21 of section one of the interstate commerce law. That paragraph, passed in the transportation act of February 28, 1920, vests power in the Interstate Commerce Commission to require common carriers to provide themselves with adequate facilities and to extend their lines

where necessary properly to perform their duties as common carriers.

It is the first application for an order requiring carriers to extend their tracks and buy new equipment. The Natchez Chamber of Commerce, several months ago, asked the Commission to order the Louisiana & Arkansas to extend its through passenger train service into Natchez on the ground that the convenience of the public required such extension.

The complaint of the Kentucky operators contains allegations of fact as to the unwillingness or failure of the Louisville & Nashville to buy equipment or extend its tracks so as to furnish transportation for the recently developed coal fields in eastern Kentucky, on the eastern Kentucky and Cumberland divisions, about which there have been many complaints. One phase of the subject was under consideration by Commissioners Aitchison and Potter a short time ago. They had to go into the subject of car supply on that part of the Louisville & Nashville system because the Laclede Gas Company of St. Louis asked for a priority order requiring the railroad to assign twenty cars a day more to the eastern Kentucky division so that coal for which it had contracted might be delivered to it. The Commission denied the application because it believed the gas company could obtain coal at some other point.

It is the theory of the complaining operators that the Louisville & Nashville has the money or the credit to provide itself with more cars and engines so that it could come nearer carrying the rated capacity of the mines on its rails than it does. The operators, in their complaint, take cognizance of the contention of the railroad company that its connections do not return cars to it with sufficient promptness to enable it to serve the mines on its rails, but they submit a table showing that even when there is a plentiful supply of cars the railroad is not able, out of its supply of equipment, to give them a ratable supply.

Among the figures contained in the complaint is a table showing performance. The Louisville & Nashville, between March 1 and October 31, owned on an average 25,367 coal cars. Norman and Graham pointed out that if the Louisville & Nashville always had a 100 per cent supply of cars owned, it would be able to supply only 61.1 per cent of the coal offered, or possible of offering, for transportation. During the period March 1 to October 31, 1920, the operators asserted, the supply of cars was only 43.92 per cent of the requisitions for cars. The operators asked for 620,120 cars in that seven-month period, but got only 272,333. Under federal control, the complainant asserts, "the director-general, having purchased 100,000 freight cars for distribution among the various railroads under federal operation, allocated to defendant 2,000 hopper cars and 2,000 drop bottom cars, but the corporate officers of defendant refused to purchase said 4,000 coal cars or any coal cars in excess of 650, but did finally under protest accept 2,000 of said coal cars, being one-half of the number of coal cars which the director-general found defendant should purchase at that time out of the cars available; that defendant is in a strong position financially, its surplus equaling its capital stock and its credit being of the best; that additional transportation facilities consisting of additional coal cars, engines and tracks, are reasonably required in the interest of public convenience and necessary for the handling of coal traffic by defendant; and that the expense involved therein will not impair the ability of the defendant to perform its duty to the public, but, on the contrary, will enable it to do so properly."

A further allegation is that, "by reason of inadequate tracks and motive power or inefficient operation, defendant, during all the time since March 1, 1920, has been unable to handle on the Cumberland Valley division even the number of cars which that division was entitled to out of the available cars on defendant's lines, but notwithstanding such inability defendant has handled privately owned cars on said division for some of the mines, to which said cars were assigned, greatly in excess of the percentage of cars handled for other mines to which no privately owned cars were assigned and defendant is continuing to thus handle privately owned cars; that other mines on said division are making arrangements to supply themselves with privately owned cars and that if this practice is continued without defendant providing additional transportation facilities it will shortly result that the transportation facilities on this division will be used entirely by privately owned cars and those mines owning no cars and having no privately owned cars assigned to them will receive no service from defendant; that by handling privately owned cars for some mines in excess of the percentage of cars handled for other mines while unable to handle all the cars available by reason of inadequate tracks and motive power or inefficient operation, defendant is giving to the mines to whom privately owned cars are assigned an undue preference and advantage and subjecting other mines to which no privately owned cars are assigned to an undue prejudice and disadvantage in violation of the interstate commerce act and especially sub-section 1 of section 3 thereof."

In further support of the contention that the Louisville & Nashville has not grown as fast as the mines on its rails have been developed, the coal operators asserted "that the daily ratings of mines on defendant's lines have increased during the past three years from 112,941 tons to 156,950 tons, or 39 per cent, while the number of coal cars owned have increased only from 23,340 (in service October 15, 1917) to 25,402 (in service on October 15, 1920), or 8.8 per cent, and the freight locomotives owned have increased only from 593 in 1917 to 694, or 17 per cent, and of these 694 freight locomotives only 478 are serviceable on October 15, 1920, as shown by C. S. 56 summary of semi-monthly locomotive equipment condition, issued by the car service division; that the trackage facilities of defendant, especially on the Eastern Kentucky and Cumberland Valley divisions, are wholly inadequate to handle the traffic normally offered during the months of heaviest demand for coal; moreover, defendant could not handle same with the present track facilities even though it were properly supplied with cars and motive power."

## PAYMENT OF GUARANTY

*The Traffic World Washington Bureau*

That the Commission made further efforts to get the Treasury Department to change its attitude with respect to partial payments of amounts due under the guaranty to the railroads after October 7 when W. W. Warwick, Comptroller of the Treasury, ruled that such payments could not be made after September 1, when the guaranty period expired, was disclosed by a letter made public November 29 by the Secretary of the Treasury written to him by Comptroller Warwick.

According to the letter, it appears that the Commission issued an amended certificate for $500,000 in favor of the Grand Trunk Western Railway Company. In it the Commission stated "that such amount of $500,000 can not be reduced by further accounting or otherwise, and there may be upon further investigation, additional amounts found due to said Grand Trunk Western Railway Company to make good to said carrier the guaranty of Section 209 of the transportation act, 1920, and which if, and when, ascertained by the Commission will be certified to the Secretary of the Treasury." This certificate was issued under date of November 24.

"The certificate submitted in this case is not a certificate to the effect that $500,000 is the amount necessary to make good to the carrier the guaranty provided by Section 209," said Comptroller Warwick under date of November 27. "You are advised, therefore, for reasons set forth in my decision to you of October 7, 1920, 27 Comp. Dec. 331, in the matter of a former certificate for the same amount in favor of this carrier, you are not authorized to issue a warrant on the certificate as submitted."

In a letter to Secretary Houston, Commissioner Meyer, in regard to the revised certificate, said:

"The changes in the original certificate were made primarily at the request of the interested carriers who believe that the revised form of certificate will more clearly present the legal questions at issue in the interpretation of section 209 of the transportation act. Believing that you are equally interested with us in securing an authoritative judicial interpretation of this provision of law we acquiesced in the request of the carriers."

Mandamus proceedings were instituted in the Supreme Court of the District of Columbia, November 29, by the Grand Trunk Western Railway Company to obtain an order requiring the Secretary of the Treasury to honor a certificate of the Interstate Commerce Commission calling for the payment of $500,000 to the Grand Trunk Western as a partial payment of the amount due it from the government under the guaranty provisions of the transportation Act. The suit was brought to test the question of whether the Secretary of the Treasury interpreted the guaranty provisions of the transportation act correctly in holding that partial payments of the guaranty could not be made after September 1.

The Association of Railway Executives issued the following statement with respect to the suit:

"This proceeding grew out of the opinion rendered October 7 last by the Comptroller of the Treasury, based upon certain certificates presented by the Interstate Commerce Commission to the Treasury Department in favor of the Grand Trunk Western Railway Company and the Detroit, Grand Haven & Milwaukee Railroad, in which opinion the Comptroller of the Treasury held that partial payments could not be made by the Secretary of the Treasury to a carrier in advance of final settlement.

"The Comptroller took the position that the Interstate Commerce Commission was empowered to issue only one certificate to each carrier, which certificate must be for the full amount of the final settlement. While in this proceeding the Grand Trunk Railway Company is the only petitioner, yet the result of the decision rendered in this case will involve the payment of approximately $400,000,000 now due to railroads of this country under the guaranty provisions of the transportation act.

"The proceeding is a test case designed and necessary to settle what the law is in respect to the authority and obligation of the Treasury Department to make partial payments under the guaranty, when amounts are certified by the Interstate Com-

merce Commission as certainly and in all events due, without waiting, before making any payment, for the result of a final accounting which cannot be accomplished for a very considerable time."

Chief Justice McCoy, of the Supreme Court of the District of Columbia, issued a rule for Secretary Houston to show cause December 7, why the court should not issue the writ of mandamus prayed for by the Grand Trunk Western Railway Company in the suit brought to test the ruling of the Treasury with respect to partial payments of amounts due under the guaranty provisions of the transportation act.

### L. E. & W. NOTE

The Lake Erie & Western, in a petition filed with the Commission, asks authority to issue its ten-year 6 per cent promissory note for $609,000, to be made payable to the New York Central. The proceeds of the loan are to be used for meeting the cost of additions and betterments to the roadway and structures and equipment.

## POSITIONS WANTED OR OPEN

# NEW SHIPPING BOARD MEETS

*The Traffic World Washington Bureau*

All the members of the Shipping Board recently appointed by President Wilson were sworn in as members of the board, December 1, by John J. Flaherty, secretary. The selection of a vice-chairman was deferred.

The members and their terms as designated by the President are: Admiral Benson, chairman, six years; Frederick I. Thompson of Mobile, Ala., five years; Joseph N. Teal of Portland, Ore., four years; John A. Donald of New York (member of the old board), three years; Chester H. Rowell of Fresno, Calif., two years; Guy D. Goff of Milwaukee, Wis., one year, and Charles Sutter of St. Louis, Mo., one year.

The new board held a formal conference immediately after the official acceptance of the members of the appointments by the President. It was believed that the first problem taken up by the board will be that of assigning to each member the particular branch of work of the board which will be under his supervision. It has been practically settled that Commissioner Goff, who was general counsel of the board, will have supervision of legal matters, and it was regarded as likely that Commissioner Teal, because of his knowledge of rate, traffic and commerce matters, would have jurisdiction over the rate and traffic departments of the division of operations.

The new members took office in face of the declaration by Senator Jones, chairman of the Senate commerce committee, to which the nominations, when sent to the Senate by the President, will be referred, that he would oppose confirmation at the short session of Congress. There has been some talk to the effect, however, that efforts might be made to have the appointment of Chairman Benson confirmed. His efforts to carry out the provisions of the new merchant marine law, which was fathered to a large degree by Senator Jones, are pointed to in this connection. Admiral Benson issued the following statement after the meeting of the board:

"In view of the day being the occasion for the new board of seven members taking the oath of office, it might be well to again call upon the American press for a continuance of its support in our work of establishing a permanent merchant marine. No one is more conscious of the splendid work done by the publishing interests of America than the chairman of the board.

"People of the United States can point with pride to their merchant marine. There are always weak links that must be strengthened. We have been trying to do all that was humanly possible in this direction. Now that we have a board of seven members, the burden resting upon the shoulders of Commissioner Donald and the chairman can be distributed and greater progress result."

Regarding the charges made before the Walsh committee, Chairman Benson issued the following statement:

"The chairman stated to the new commissioners that, so far as he had been able to determine from the report of the Walsh committee, and the evidence so far given before it, defects noted or reported had either been already corrected or steps taken to correct them prior to the actual meeting of the Walsh committee.

"The board unanimously expressed the feeling that every effort should be made to assist the committee in its work and to co-operate with it in every possible way in carrying out its investigations, and that every effort would be made to obtain further evidence and to prosecute all guilty parties as soon as such evidence was obtained, regardless of whether they were in the organization or outside."

Chairman Benson announced the appointment of Edward M. Hyzer, formerly general counsel of the Chicago & Northwestern, as general counsel of the board. Mr. Hyzer succeeds Commissioner Goff in that position. The members of the board were elected as trustees of the Emergency Fleet Corporation.

Admiral Benson announced this week that the board was turning over to the Department of Justice all information it had with respect to violation of the law in connection with Shipping Board operations. He said the records of the board had been opened to the Department of Justice to aid it in gathering evidence against those who have been charged with violating the law.

Much of the time this week of the Walsh select committee of the House of Representatives, which is investigating operations of the Shipping Board, was given to the charges involving R. W. Bolling, brother-in-law of President Wilson and treasurer of the Shipping Board. Mr. Bolling appeared before the committee in New York and denied any connection whatever with or participation in a bribe of $40,000 which Tucker K. Sands, formerly vice-president of the Commercial National Bank of Washington, D. C., testified the Downey Shipbuilding Corporation had paid for special favors from the Shipping Board. The bribery charges made by Mr. Sands also were denied by Wallace Downey, president of the shipbuilding company, who said, however, he had paid Sands money for business services.

After the charges were made by Mr. Sands before the committee, Chairman Benson issued a statement to the effect that he had had an investigation made of the charges by Sands and that there was no foundation for them. Guy D. Goff, one of the members of the board appointed recently by President Wilson, also issued a statement as general counsel of the board, that it would be his single purpose "to run to cover" every employe of the board who was guilty of corruption.

A statement to the effect that the Shipping Board did not maintain adequate supervision over repair work performed for the board was made to the Walsh committee by Charles F. Hanes, an assistant examiner for the Emergency Fleet Corporation. He said the board was paying from $60,000,000 to $70,000,000 annually to companies in American ports for repair jobs over which there was not adequate supervision. He cited instances of ships on which repair work was done sailing before requisitions were placed in the hands of the supervisory force. He also said overcharges resulted from overemployment on Shipping Board jobs.

Charles Banzahf, a traveling auditor employed by the board, also referred to laxity in checking up expenses for repair work, and said that there was "graft" in connection with the settlement of repair bills. He said that of $7,000,000 worth of repair work under way in the South Atlantic district 10 per cent represented "graft."

# EXPORT AND IMPORT RATES

*The Traffic World Washington Bureau*

Tying up of Shipping Board ships in Pacific ports because there is no tonnage for them, while British, Japanese and other foreign-flag ships are carrying American goods to the Orient, is expected by western traffic interests soon to cause a focussing of attention to the export and import rail rate situation. There has been a conroversy about this ever since Pacific coast interests began asking for an equalization of export and import rates so as to enable ships plying between American Pacific ports and the Orient to obtain some of the tonnage they have argued is causing congestion on eastern rails and at New York.

The historic line-up in that fight between the east coast and the west coast has been restored. Pacific ports are asking for an equalization of rates to Oriental ports so that the shipper can forward his goods either east or west. Eastern ports (particularly the Merchants' Association of New York) are opposing any move in that direction that will have the effect of sending traffic which might otherwise move via New York to any of the Pacific ports. J. C. Lincoln, traffic manager for the New York Merchants' Association, is on record with the Commission with a protest against any such equalization as will have that effect, on the principal ground that rates which have been proposed would more than equalize the all-rail rates to New York plus the ocean rates to the Orient for the movement beyond New York, and would, therefore, be an undue preference for the Pacific ports and an undue discrimination against the Atlantic ports. His request is that, if such rates are filed, they be suspended pending investigation to ascertain the facts.

W. L. Clark, of Seattle, who has made the development of west-bound traffic his specialty for a number of years, contends that the policy of the commercial association at the eastern ports is a hurt to the interests of the whole country because it results in a continuance of the congestion at New York, thereby slowing up business in the eastern part of the country, and the tying up of Shipping Board ships at Pacific ports, not to mention the effect on the transcontinental railroads caused by their having to haul equipment westbound empty.

Another claim made by Mr. Clark is that when the increase in rates authorized by Ex Parte No. 74 destroyed the equalization that had theretofore existed by reason of what the Railroad Administration had done, eastern railroads assented to a restoration of the old equalized conditions until the influence of the New York Merchants' Association persuaded them to withdraw authority to publish such equalizing rates, from Countiss.

When the eastern lines decided not to reduce rates so as to bring about equalization, the lines from Chicago announced that they would publish rates from as far east as Illinois. Such rates went into effect October 23. Ever since that time there has been an expectation that the eastern lines would come in on an equalization scheme to which Lincoln's protest would apply.

Pacific port interests claim that there is further interference and obstruction to American commerce, rail and ocean, by means of an arrangement whereby all shipments from Vancouver, Victoria, or from Prince Rupert, B. C., routed by the Canadian Pacific or the Grand Trunk Pacific, and their connections within Canada, shall be carried to eastern Canadian ports on the Chicago rate basis. Freight from all other Pacific ports and via other than the Canadian lines mentioned, and their connections, are to carry higher rates.

The New York Merchants' Association asked for the suspension of the reductions from Chicago rate territory and west that went into effect October 23, but the Commission declined to suspend.

The Pacific coast interests are expected, if the eastern carriers do not file tariffs making reductions so as to allow shipment to the Orient, from territory east of Chicago, via either

Pacific or Atlantic ports, to ask the Commission to order the publication of such rates, without primary action on the part of the carriers.

In discussing the situation produced by the failure of the eastern lines to file reduced rates, W. L. Clark said:

"Under present conditions eastern manufacturers find themselves practically confined in their Pacific export trades to the use of the port of New York, instead of being permitted to use those of the Pacific as well. This limits their shipping opportunities to such an extent that not infrequently credits expire before they are able to accomplish shipment and thus export sales are restricted. Also manufacturers complain of having been denied by certain eastern trunk lines permits to ship into New York city for trans-Pacific export, such refusals being based upon line or port congestion. Exporters and importers desire freedom of opportunity to use the Pacific as well as the Atlantic ports in trans-Pacific trades, and protest that unless such opportunity be afforded United States export trades will be greatly diminished in favor of other countries. By reason of conditions such as complained of and efforts on the part of Japanese carriers to divert traffic from the Pacific coast, already more than two-thirds of trades with the Orient have been diverted to the Atlantic coast, principally to New York, aiding in the congesting of that port and the rails leading thereto, which must necessarily result in increased expense for the carrying of domestic shipments in eastern territory. Eastern rails are congested, western rails are short on Westbound freight, Shipping Board ships upon the Pacific are short on cargo, while those operating from New York are so sadly delayed by reason of the congestion at that port that, according to recent report of the Shipping Board, the average time in port on 'turnaround' is nearly forty days. Meanwhile the United States public pays the bills resulting from lack of proper consideration of this objectionable traffic situation, contemplation of which must be highly gratifying to our competitors for world trade.

"The protest of the New York Merchants' Association to the Commission is a splendid exemplification of overreaching selfishness. Not satisfied with having shut eastern manufacturers off from the use of Pacific ports, and thus restricting them in their export trades, they would undertake to prevent the manufacturers in the middle west from using the Pacific ports to which their business is naturally tributary. The whole situation contributes to unsuccessful operation of both American ships and American railroads, from the costs of which American citizens cannot escape.

"There is still another contributing factor of interference with the success of American railroads and American ships in trans-Pacific trades operating from American ports upon the Pacific. Supplement 2 to eastbound import tariff 30-F, issued by R. H. Countiss, Chicago, provides that all shipments from Vancouver, Victoria or Prince Rupert, B. C., when routed via Canadian Pacific Railway, Canadian National Railway, Grand Trunk Pacific Railway, or those railways and their eastern connections within Canada, shall be carried to eastern Canada points at the same rate as is applicable via Canadian or American lines for similar freights to Chicago territory. The tariff also provides, in limitation, that all shipments from all Pacific ports other than those designated above and via other than the Canadian lines, shall be assessed to those same Canadian points, a different, and in most instances higher, rate. The effect of such application of rates is adverse to American interests in many particulars:

"First. It diverts import business away from American ports on the Pacific to those of Canada, by reason of the lower rate application, and the further fact that shipments so handled are paid in Canadian currency, at the present low rate of exchange, whereas if handled via American ports, such shipments must not only pay the higher rate via those ports, but must also pay the trans-Pacific steamer haul and the American rail haul in American money. The differential fixed by the tariff is thus greatly increased.

"Second: Until there is re-established the former ratio of equalizing rates through Pacific ports on business with points east of Chicago, imports via Canadian ports and rail lines to points in eastern Canada may be trans-shipped from their Canadian destinations to points in territory east of Chicago at lower rates, when exchange differences are considered, than they can be handled by our American rail and steamer lines.

"Example: Windsor, Ont., takes the Chicago rate and deliveries can be made to Detroit by haul by truck. Shipments intended for Buffalo may be shipped at the Chicago rate to Niagara Falls. Those intended for New England and New York would be shipped to Montreal. To many points, the saving in exchange on ocean and rail rates to the Canadian destination will permit cutting the New York water rate.

"The whole trend of the situation is so adverse to American interests that the aid of the Commission should be sought in order that the remedy may be applied. It were well in this case to meet discrimination with discrimination. Canadian lines have always taken an advantage in American freight movements, but have jealously guarded those of Canada to see that no considerable quantity moves over American rail lines. They vigorously protest against any effort to prevent Canadian rails from participating in the carriage of freight between two points both within the United States, notwithstanding they now establish for those Canadian lines a monopoly upon the import business of Canada, and further encroach upon United States trades. It only requires analysis and proper action by American rail lines and the Commission to fully protect American interests and nullify such discriminatory action."

## SHIPPING BOARD WANTS MONEY

*The Traffic World Washington Bureau*

The United States Shipping Board has submitted to the House committee on appropriations, a request for an appropriation of $150,000,000 for the fiscal year ending June 30, 1922. Consideration is also being given by the board to a request for a deficiency appropriation of approximately $100,000,000 for the current fiscal year.

The board estimated that $150,000,000 would cover all expenses for the year ending June 30, 1922. Of that amount, it is estimated, $85,000,000 will be needed to complete the construction work under way; $50,000,000 will constitute a fund for operation of the board's ships, and the remainder will go for general office expenses.

In connection with the requect for a deficiency appropriation of $100,000,000, officials of the board estimate that the expense for the current year will reach $325,000,000, while the income will be about $225,000,000, unless the War Department should pay what the board claims is due it from that source. The indebtedness of the War Department to the board is more than $100,000,000, it is said.

Effective July 1, 1921, the Shipping Board must cease paying expenses out of receipts, under legislation enacted at the last session of congress, and must turn its receipts into the United States treasury. This makes necessary the granting of an appropriation by Congress.

## PANAMA CANAL EARNINGS

*The Traffic World Washington Bureau*

Prediction that within a reasonable period of time the Panama Canal will earn an actual profit on its cost of $366,650,000, exclusive of expenditures for military and naval defense, is made by Brig. Gen. Chester Harding, governor, in his annual report to the Secretary of War.

The report shows that the canal, in the fiscal year ending June 30, 1920, had the best year from a financial standpoint in the six years of its operation. Tolls and other revenues amounted to $8,935,871, while current expenses of operation and maintenance amounted to $6,548,272. The excess revenue this year reduced to $2,231,091 the excess of expense over revenues for the six-year period the canal has been in operation.

"From an analysis made under reasonable assumptions as to amortization, depreciation, obsolesence and interest," the governor says, "it is estimated that with an annual revenue of three times that of 1920 the canal will make a financial return on the investment."

During the fiscal year 2,745 vessels passed through the canal, of which 2,478 were commercial transits. More than 25 per cent of the cargo moving through the canal since its opening was in transit between the United States and South America, and 14½ per cent was between the Atlantic coast of the United States and the Orient, the report shows.

Brig. Gen. Harding points out in the report that the canal is performing an important commercial service by stimulating American trade with the west coast of South America and the Orient.

## HEARING ON SECTION 28

*The Traffic World Washington Bureau*

The Shipping Board will hold a hearing next Monday on the question of making operative section 28 of the merchant marine act, which has the effect of prohibiting the application of import and export rail rates on freight brought to or from United States ports in vessels under foreign registry.

Robert A. Dean, special assistant to Admiral Benson, chairman of the Shipping Board, who has had charge of matters relating to Section 28 of the merchant marine act, said the board had received considerable comment both in favor of and against the enforcement of that section after January 1, 1921, when the suspension of the section expires.

The meeting Monday will be for the purpose of getting the views of all those concerned, Mr. Dean said, and representatives of the railroads, the Pacific coast, gulf ports, and shippers are expected to be present.

It is Mr. Dean's view that the section may be made operative as to particular ports of the United States where the board may find that there is sufficient American tonnage to carry all exports and imports to and from those ports. He said, however, that some attorneys took a different view and that the section would have to be made operative as to all ports or none.

Under the terms of the section, the board may certify to the Interstate Commerce Commission that there is not sufficient American tonnage to handle all exports and imports and the Com-

mission must suspend the section on such certification. After the act was passed in June, 1920, the Commission suspended the operation of the section twice on certificate of the board, the expiration of the last suspension being January 1, 1921.

It is understood that considerable objection to the enforcement of the section will come from representatives of certain ports, particularly some of the gulf ports, and probably some of the Pacific ports. Some time ago it appeared that there was a division of opinion on the Pacific coast as to the desirability of making the section operative.

The fact that there has been a slump in ocean traffic with the result that the Shipping Board has tied up a number of its vessels may have an important bearing on the situation, it is pointed out, and the board might be influenced to apply the section at least to certain ports if it is determined that that may be done.

Foreign shipping interests have been particularly anxious as to the enforcement of the section. Assurance has been given from time to time by Chairman Benson that the section would not be used to shut out foreign lines and that where there was enough tonnage for both American and foreign ships, the latter would get their share of the trade. The surplus of tonnage, however, injects a new element into the situation at this time.

## COMPETITION IN SHIPPING

*The Traffic World Washington Bureau*

"There has been a serious lessening in ocean freight movement with the consequent tying up of Shipping Board and many privately owned vessels," said Admiral Benson, chairman of the Shipping Board, November 24, in a message addressed to "all seafarers of the American merchant marine."

"Foreign competition, which our merchant marine must face, has become keen," the Admiral's statement said. "I must appeal to your public spirit in helping the Shipping Board under these unusual conditions, to the end that we may meet competition successfully. It is of vital importance that hearty support of all those serving on Shipping Board ships be given in the direction of reducing expenses and in making our merchant fleet self-sustaining.

"Masters and chief engineers on our ships, as well as port captains and port engineers, are urged to take the utmost interest in the operation and proper repair of the vessels in their charge. To do this it will be necessary for every individual to exert himself to maintain his ship in seaworthy condition, to effect quick turnaround, to reduce the cost of repairs by making them within the regular hours allotted, and by avoiding overtime by every possible means. In this officers should set a good example to their men.

"Our attention has been called to the lack of discipline on shore among some of the officers and seamen of vessels touching at foreign ports. This situation is resulting in some vessels being delayed with consequent expense or in having to sail short-handed. It should be stopped at once.

"Unless such improvements in efficiency can be brought about it is inevitable that an increasing number of vessels must be tied up with consequent reduction in the opportunities for employment of both men and officers.

"The men of the merchant marine have never failed to respond to an appeal in behalf of the best interests of our country. I feel sure that prompt and earnest effort will be made by everyone in the service to meet the present situation."

The Shipping Board now has tied up approximately twenty-five large ocean-going vessels and seventy-five lake type ships. In addition there are about twenty-five of the steel cargo vessels in need of repairs. The board has in round numbers approximately 1,200 steel cargo vessels.

The surplusage of ocean tonnage, both American and foreign, due to falling off in cargoes offered for transportation, has brought ocean freight rates down to a low level, but in the opinion of Shipping Board rate officials there will not be much more of a drop in rates, as further reductions would result in rates that would bring in less than the cost of operation.

## USE OF AMERICAN SHIPS

*The Traffic World Washington Bureau*

A recommendation by Admiral Benson, chairman of the United States Shipping Board, that the railroads, through their officials and employes, boost as much as possible the shipment of raw materials and manufactured products destined for foreign ports in American ships has been favorably received by T. DeWitt Cuyler, chairman of the Association of Railway Executives, according to correspondence that has passed between Admiral Benson and Chairman Clark of the Interstate Commerce Commission, and between Admiral Benson and Mr. Cuyler.

Admiral Benson wrote originally to Chairman Clark, pointing out that the co-operation of the railroads was needed to make the American merchant marine a success and also to make the railroads successful. He said the prosperity of the railroads depended to a large extent on the maintenance and expansion of the foreign trade of the country and also on an adequate merchant marine. His belief, as expressed in his letters, was that the officials and employes of the railroads could do much toward getting cargoes for American vessels.

Chairman Clark advised Chairman Benson to take the matter up direct with Mr. Cuyler who replied that he would take the matter up with the various railroads and do all he could to urge favorably consideration of the proposal.

## CONDITIONS AT HAVANA

*The Traffic World Washington Bureau*

Some indication of improvement in conditions at the port of Havana, Cuba, is contained in the latest advices received by the Department of Commerce. According to a cablegram, in the week ending November 20, 284,000 packages were dispatched through the customs. It was estimated that 30 per cent more arrived than were dispatched in the week, although, in spite of the moratorium, the total dispatched was not far below the average number. It was stated that this was due to the careful handling of funds not subject to the moratorium; to the liberality of local banks in emergencies when feasible; to the relief afforded by arrival of shipments of money since the moratorium; and also to the fact that most foreign banks did not take advantage of the moratorium.

"The situation regarding ships shows some improvement, but no progress in the relief of congestion," said a cabled report to the Department of Commerce, December 1, with respect to conditions at the port of Havana, Cuba. "Much merchandise on docks and in lighters has materially deteriorated."

## TAXES ON DEMURRAGE AND STORAGE

*The Traffic World Washington Bureau*

A revision of the rules governing internal revenue collectors in the assessment of the war taxes on transportation was made public by the Treasury Department, November 29, in the form of T. D. No. 3096, which, so far as shippers and railroads are concerned, supersedes T. D. 3022. The effect of the revision is to impose a tax on demurrage and remove the tax on storage when the storage charges accrue after notice of arrival and the expiration of a reasonable time for the removal of the goods. The imposition of the tax on demurrage is accomplished by the inclusion of demurrage in the definition of transportation.

This revision was begun months ago. The Treasury officials at first seemed not content to accept the definition of transportation given in the interstate commerce law as sufficient to guide them. Their efforts to frame a definition for the guidance of internal revenue collectors resulted in a number of decisions that had to be revised almost as soon as they were made.

The revised rule for collecting the wax tax is as follows:

"Treasury Decision 3022 is hereby revoked so that Article 2 and Article 51 of Regulations 49 Revised, will be as follows:

Art. 2. Transportation.—The word "transportation" as used in Title V of the act, means the movement of persons and property by a carrier, including all services and facilities rendered, furnished, or used in connection with such movement by or on behalf of a carrier. It includes receipt, delivery, elevation, transfer in transit, ventilation, refrigeration, icing, storage, demurrage, towage, lighterage, trimming of cargo in vessels, wharfage, handling of property transported, feeding and watering live stock, and all other incidental services and facilities. It does not include cartage or passengers' meals or hotel accommodations.

Art. 51. Storage Charges.—Amounts paid for storage if a part of transportation are subject to tax. Storage after delivery to owner is not a part of transportation. Storage by or in behalf of a carrier furnished to a shipper on receipt of his goods for shipment, or storage by or in behalf of a carrier at destination before delivery to owner, whether in outside warehouse or otherwise, is a part of transportation and subject to tax. However, where the consignee has been notified of the arrival of a shipment at destination and fails to remove it within a reasonable time after such notification, the transportation is considered as having ended after such reasonable time and charges for storage thereafter are not subject to tax."

The internal revenue branch of the Treasury Department, on inquiry by The Traffic World, December 2, said the railroads would be expected to collect the war tax on demurrage from May 26 to November 27 in accordance with Treasury Decision No. 3096.

Unless the Secretary of the Treasury should be persuaded to reverse the ruling of his subordinates, the railroads will have to present under-charge statements to shippers who have paid their demurrage bills between the dates mentioned. The railroads, in the collection of the war tax, are agents of the Treasury Department, and not merely common carriers. Appeal to the Commission, on the ground that such action would be retroactive, would be useless, because the Commission has no control over the war tax part of a rate or charge.

### MAINTENANCE EXPENDITURES INCREASED

The monthly statements of the Interstate Commerce Commission show that from March 1 to September 1 of this year the railroads expended approximately $175,000,000 more on maintenance of roadway and structures than was spent for the same purpose during the corresponding period last year. In the same six months, the 1920 figures for maintenance of equipment exceeded the 1919 March-September total by approximately $220,000,000.

# The Open Forum

**A Department for the Discussion by Readers of THE TRAFFIC WORLD of Transportation Questions of Interest to Traffic Men**

## A SCHOOL OF TRANSPORTATION

Editor The Traffic World:

I am attracted by your editorial of November 20 quoting what Mr. Stanton Ennes, of the Baltimore & Ohio, has to say relative to the need of a school of transportation. It would, indeed, be fine if railroads could be manned by college graduates and it would most surely reduce the economic loss incurred by teaching men to do things right by doing them any old way until they gradually came to know the right. But the railroad business seems to be different. The manner of filling vacancies is different than that of any other line of endeavor which comes to mind at the present time, and the whole institution seems to be a weeding-out process from very poor material as a whole. I don't say that such a school would not be successful and would not have a great tendency to improve conditions generally. Such schools have had a most beneficial effect on other activities, why not the railroads?

The principal difference comes when the "young man feels the thrill and the lure of the railroad business." Now, that is the keynote of the situation. From some twenty-five years' observation in the railroad business, it occurs to me that very few men with money enough ahead to go to school or with fathers well enough off to send them to school ever gravitate to the railroad game; but, rather, your transportation man comes from the very great number of men who dislike the idea of manual labor by the day and are lured by the idea of a continuous salary at what appears to them an easy life, and the privilege of a pass now and then. Primarily, however, it is to get something to do that will in a measure pay his way while learning the business. He has a mistaken idea that, for the effort expended, railroading is about the highest paid vocation on earth. He finally awakens to the fact that the pay is not what he expected it would be, and at this point may weaken and not deliver the amount of effort he is being paid for. If this is not the case and he sticks to his job, learning by mistakes and experience, gradually gaining promotion, in spite of under officials and chief clerks, he finally arrives at a point where he perceives that with less effort and fewer years of experience some of his childhood friends have outstripped him because of their preparedness by early schooling.

I might go on indefinitely and show possibilities for advancement but, by comparison, the railroad business would show a small proportion of successes in life compared with any other profession or industry. I think this is largely due to the lack of will power of the average man to decide between a permanent situation at a fixed salary and getting out by himself and selling his ability at the highest market value, but this is enough. What I really want to say is that railroading is the greatest school of them all, in that in this school men make themselves regardless of all opposition, providing they are composed of the right material, and, strange as it may seem, the right material is present in most men that "stick" to the business.

Mr. Ennes and general managers quite generally have been overlooking the opportunity of life right in the railroad business. I am pleased to note, however, that a great many executives are seeing the light. For years the cry of co-operation has been abroad in the land, but in the old days co-operation meant co-operate with the officials to make them bigger men. Today co-operation is beginning to mean that the employe is an equal beneficiary with the employer, and a man lifts himself up by pulling the other fellow with him instead of rising by the downfall of others less fortunate. Commercial organizations have long since recognized this principle, because it has been taught in the schools of business, and a close partnership has sprung up between employe and employer. Frequent meetings are held and a personal touch developed that makes men feel the importance of each other, and even the office boy is an important cog in the whole machine.

The general manager who will take the title on himself of professor of transportation and proceed to disseminate his knowledge to those under him and spend a little time and money on proper education of his employes, will reap his reward in more efficient men and an economic saving for his company.

Schools of instruction in all departments, consisting of meetings of officials and their help, will do the business.

In a small way we have tried it on the Detroit & Mackinac Railway, and it is proving successful. The writer takes personal interest in the traffic department meetings, and, while our efforts have not broadened to include everything in connection with railroading, we try to cover every traffic feature and bring in other departments as far as their work has a direct bearing on traffic. We also invite the public to such meetings, in small numbers, to be sure, but representative of patrons generally. The new era in railroading requires education, not only of the employe, but the officials and the general public as well. A department of publicity and education should be organized on every railroad and this department should be closely related to the traffic end of the business, because it is the traffic department that has its finger on the public pulse.

Geo. L. Wakeman, Traffic Manager,
Detroit & Mackinac Ry. Co.

Bay City, Mich., Nov. 26, 1920.

## THE INDUSTRIAL TRAFFIC MAN

Editor The Traffic World:

Being a regular reader of your Traffic World, I have noted with much interest the various articles and comments printed under "The Industrial Traffic Man." Being an ex-railroad man of seven years' experience, at one time affiliated with one of the largest railroads in the country, I cannot help but express my opinion on this subject. These articles are unusually interesting to me and also from the standpoint of a great number of others in the game, as Mr. Scrivener has said in your issue of November 27.

In picking apart the two articles appearing in your publication of November 13, written by W. K. Webber and J. O. Richards—particularly the first—it certainly is quite evident, in my estimation, that Mr. Webber has never had a great deal of actual or, we might say, practical railroad experience, if any, from the trend of his article. It has been proved without a doubt that the traffic man of today has, to a great extent, been connected at some time or other with railroads and that actual and practical experience along transportation lines is really essential and necessary to a great extent in the commercial field of today.

I also wish to stand back of Mr. Scrivener in the remark bearing on "large railroad freight office experience," this being a great asset to the young man so inclined.

In my own experience particularly, and in a great number of others, I dare say, who have worked themselves up from the bottom, there was never any time to gaze at the clock and watch the hands go round, in an office of a railroad nowadays, where they put in twenty-four hours in a day and then wished the day was longer in order to catch up.

So I think we can and ought to give the man with practical knowledge of railroading bearing on traffic work and, in fact, all of its branches, a little credit that is certainly due him.

Scranton, Pa., Nov. 30, 1920. E. A. Brown.

## McCAULL-DINSMORE DECISION

Editor The Traffic World:

In the Open Forum for November 27 you printed a letter by W. A. Fielden under the heading of "McCaull-Dinsmore Decision." This letter appears to have been written under a misconception of the decision, which seems to be very common.

The court threw out an arbitrary and unfair rule of the carriers that in case of loss or damage, settlement should be based on the invoice price, or value at time and place of shipment. It did not substitute another equally arbitrary rule that settlement should be based on market price at destination. The court did rule that the carrier "shall be liable . . . for the full actual loss, damage, or injury;" obviously the only fair basis of settlement for either carrier or owner.

Mr. Fielden refers to sugar shipments and seems to infer that he would be out of pocket if market price at destination were tendered him for a lost bag worth double that price at time and place of shipment. Mr. Fielden seems to lose sight of the fact that the carrier undertook to deliver, not the value of the bag of sugar, but the actual bag itself. Being unable to make delivery, the carrier tenders in settlement a sum of money for which Mr. Fielden can replace the lost bag; and he sustains no loss whatever. This might be clearer to Mr. Fielden if instead of a money settlement, the carrier offered him another bag of sugar equal in weight and quality to the one lost. Mr. Fielden's net loss in no way involves the carrier. It is a shrinkage in value that applies to the bags delivered as well as to the bag lost.

Had the market gone up instead of down while the goods were in transit, the owner, under the old rule, would have suf-

fered actual money loss in replacing the missing merchandise. For this the carrier can now be held.

While the old rule was enforced, we frequently received merchandise damaged to the extent of 25 per cent of its value, but which, because of a rising market, was worth more at destination in the damaged state than were perfect goods at time and place of shipment. If we refused delivery we had to bill the damaged goods to the carrier considerably under their actual value. If we sold the damaged goods for a price higher than the cost of perfect goods, we could make no claim on the carrier, and they escaped all liability for damage. The McCaull-Dinsmore decision enables us to collect the amount of our actual loss in such cases, viz., the difference in value between perfect goods and damaged goods at market prices at destination.

Charles S. White,
Dec. 1, 1920. No. 61 Broadway, New York, N. Y.

## FREIGHT TRAFFIC RED BOOK

The Freight Traffic Red Book is a recent work put out by the Traffic Publishing Company, New York. The publishers say the work is compiled and edited with the assistance of about forty practical traffic men, many of them officials of large railroads and industries. It is a practical reference book for those actively engaged in traffic work, an everyday guide for the shipper, and a condensed but comprehensive textbook for the student of freight transportation. It is being used in Columbia, Harvard and New York universities and in other schools and colleges, the publishers say.

Besides explanations of over 500 traffic abbreviations, definitions of over 450 traffic terms, brief but comprehensive outlines of the fundamental principles of freight rates, classifications, territories, tariffs, switching, demurrage, etc., the book contains the latest rules and rulings of the Interstate Commerce Commission, the rules of practice before the Commission, the various acts of Congress relating to railroad and steamship transportation, and standard forms used in the transportation business. The consolidation of these under one cover is a feature that is meant to appeal strongly to the busy traffic man.

"Never before in the history of transportation has the necessity for the employment of expert traffic men to meet and solve shipping problems been so generally recognized by our great industries as it is today," say the publishers. "The transportation problems of our country have become so complex, and the question of freight rates and service has become such a vital factor in the development and expansion of our commerce, that industries are establishing traffic departments in charge of capable traffic men to handle their shipping affairs.

"The Freight Traffic Red Book was published for the purpose of placing in the hands of the shipper and the traffic man information of daily need in their work."

## FARMERS AND TRANSPORTATION

The necessity for increased facilities of transportation if the agricultural industry of the country is to continue to prosper and expand and measures for obtaining them in line with the projection of a national agricultural policy will be among the problems to be discussed by the American Farm Bureau Federation when it meets in its second annual convention at Indianapolis Dec. 6, 7 and 8.

Discussion of the transportation problem will embrace all the phases it presents—railroads, the need for more and better highways, use of motor vehicles in marketing farm products over short distances, the extent to which the farmer can advantageously utilize the country's waterways, and the benefits he will derive from the proposed deep water route from the Great Lakes to the sea.

On the program are W. P. G. Harding, governor of the Federal Reserve Board; Gov. W. S. Harding of Iowa; Gov. Goodrich of Indiana; Henry Wallace, editor of a national farm magazine; T. H. McDonald, chief of the U. S. Bureau of Good Roads; H. G. Shirley, secretary-treasurer of the Federal Highway Council; Clifford Thorne of Chicago; J. R. Howard, president of the American Farm Bureau Federation; Gray Silver, legislative representative of the Federation, and Sir Auckland Geddes, the British Ambassador to the United States. Ambassador Geddes will discuss the international relationships of agriculture. Others who are expected to speak are E. T. Meredith, Secretary of Agriculture, Herbert Hoover, former congressman A. L. Lever and William Redfield, former Secretary of Commerce.

The convention will take up the transportation problem in conjunction with its plan for the formulation of a national agricultural policy.

Because of its importance to the agricultural life of the nation, no time will be lost by the convention in tackling the transportation problem, and the entire afternoon session of the first day will be devoted to its discussion. Clifford Thorne will speak on the railroads and their relationship to the farmer. T. H. McDonald will describe the need of a greater and better highway system and the urgency of making provision for it in the contemplation of a national agricultural program, dwelling at the same time on the advantages to the farmer offered by the motor truck for marketing products over short distances. H. G. Shirley will present a national highway policy covering both the construction and maintenance of highways.

The proposed waterway from the Great Lakes to the sea will be discussed by Governor Harding of Iowa. He will be followed by Charles P. Craig of Duluth on the same subject.

## RULE FOR COMBINATION OF RATES

*The Traffic World Washington Bureau*

An effort is being made by tariff filing agents and men in the Commission interested in the technical side of tariff filing to get rid of the rule for making combinations of rates within the six months promised by the carriers in the course of the recent advanced rate case. They hope to get rid of it in December.

The rule for making combinations is an inheritance from the Railroad Administration. It was put out to take some of the supposed curse off General Order No. 28, which decreed an advance in rates the like of which, for size, had never been known. It was intended, with a few exceptions, that only one increase should be made in the through charges. The rule for making rates by combination had to be devised because there was no time to study out joint or proportional rates, if double increases were to be avoided.

Some proportional rates have been published to take the places of combinations, but not many. The Commission has expressed the desire that the carriers study the movement of commodities and provide either joint or proportional rates for such commodities as cross the territorial boundary lines, so that all the things moving in considerable quantity might have the benefit of easily ascertained joint or proportional rates, leaving those that move only occasionally across the boundaries to bear the burden of the separately established rates of the carriers involved.

There are some men in the Commission who claim there is no authority for the rule for making rates on combination because the sixth section requires carriers to establish joint through rates or to publish their separately established rates which will apply in the absence of such joint through rates. It is contended that publishing a rule for making rates on combination is not a compliance with the law, even if it was lawful for the President, under his war powers, to prescribe it.

Rates on petroleum and its products have given an unusual amount of trouble. The percentage increase under General Order No. 28 was commuted to a specific maximum of 4.5 cents, observing fifth class as the maximum. West of the Mississippi the crude oil is estimated to weigh 7.4 pounds to the gallon and east of the Mississippi 6.6 pounds to the gallon.

In making the combinations, the question of the minimum to apply has been one of the hardest with which tariff and traffic men have had to deal. The efforts of the tariff publishing agents, too, have been abortive in several instances, causing the suspension in one case of a rule for making the combinations. There are now pending before the Commission a number of tariffs carrying rules for making rates by combinations, all of which are under scrutiny. They will be unnecessary if and when the carriers abolish the attempt to apply only one increase on through movements by means of a rule for combinations instead of by establishing joint or proportional rates.

## SUGGESTION FOR NEW ENGLAND ROADS

*The Traffic World Washington Bureau*

A suggestion that the New England lines may have to overcome their bad financial condition by means of economies rather than by increases in rates, and that reductions in wages may be among the economies, has been made by Chairman Gunnison of the New Hampshire commission in a letter to Chairman Clark of the Interstate Commerce Commission. The New Hampshire commission was not represented at the conference of New England roads on November 22. The letter in question was written to place before the Commission the views of the New Hampshire commission. In his letter Mr. Gunnison said:

"We were very much disappointed to learn that they made so poor a showing for September and October. The figures submitted, which we assume to be correct, prove beyond question that the railroads in New England need a larger net income. The real question is how shall this be obtained.

"It can be done in one of two ways—namely, by decreasing operating expenses or by increasing their revenue.

"The first method should be adopted if possible. Further increase in passenger rates would not be practicable, as they are now so high that a man can travel with one or two members of his family in his automobile, with gasoline at 35 cents per gallon, with less expense than he can travel by train, and if he has six in the party he can hire a car with a chauffeur to carry them at a cost not in excess of the railroad fares for the party. We know this because of practical experience. Therefore, it is exceedingly doubtful if an increase of revenue could be obtained by raising the passenger rates.

"In regard to freight rates we should view a further in-

crease with considerable apprehension because of the effect it would have upon New Hampshire industries, and we think the industrial conditions in New Hampshire are more or less typical of New England. In New Hampshire all business is slowing down. There is a recession in prices of all kinds. Even coal, we understand, is easier. Many factories are running on reduced time, and some have closed entirely. Wages in some instances are lower and the whole tendency is to reduce the cost of productions in order to place the product on the market at a lower price, and thereby stimulate trade. Now to have the freight rates increased above the increases only recently granted will be a serious matter for New Hampshire manufacturers in general and disastrous to the weaker ones. Anyone familiar with local conditions will agree that even a temporary increase in railroad rates in New England at this time should be avoided if possible.

"Having the railroads in question reduce their operating expenses and still operate efficiently and safely is the important question to be considered. If they can they should do so.

"We realize that the standard wage schedule fixed by the Labor Board has to be complied with, and what it shall pay its employes is a matter over which the railroad has no direct control. If, however, in standardizing wages, the railroad employes are placed upon a much higher level than other labor of the same class in the locality where the employes reside, then it would seem proper for the railroads to ask the Labor Board for a modification of its standard wage schedule, as applied in those localities. We know of instances in New Hampshire where this situation exists.

"But there may be other economies beside reduction of wages that may be made. For instance, it is now the custom of the railroads to grant passes to all employes, their families and dependent relatives, near and distant, to ride not only their system, but over the lines of other railroads. Lawyers also who do regular work for the railroads are granted annual passes to use at all time, whether or not traveling on railroad business.

"It seems to this Commission that this custom is all wrong. No one should ride on a pass who is not traveling on business for the railroad issuing the pass. Eliminating these passes might not produce a great deal of revenue for the railroads, but it would at least be a step in the right direction, and do away with an unjustifiable discriminatory practice. The fact that the statutes legalize the practice does not make it obligatory upon the railroads to follow it, nor does it make such practice fair nor just.

"As we view it, the railroads should reduce operating expenses all that they can consistent with good service and public service. This may necessitate going before the Labor Board for a modification of the wage schedules, or it may mean a reduction in the number of employes by having a less number of men do the work that is now being done by a larger number, or it may mean employing more efficient help, or the discontinuance of certain practices, which are now unremunerative. It may mean all these things and many more that may suggest themselves to the expert railroad managers. But certainly something can be and should be accomplished along these lines, before any increase in rates is granted.

"Any deficiency that may exist after all possible economies have been put into effect should be made up, if possible, by a temporary increase in the New England roads' share of the joint rates until your commission has finally passed upon the question which is now pending before it. Of course, if the connecting roads are in as dire financial straits as the New England roads, then it may not be equitable to do this. It may not seem fair to do this unless it is apparent that the New England roads are not getting their just proportion of the joint rate. In that event, however, it should not seem out of place to order a temporary increase to the New England roads, pending the determination of just what the proper division of the through rate should be."

## BOARDS OF LABOR ADJUSTMENT

*The Traffic World Washington Bureau*

The board of directors of the Chamber of Commerce of the United States has adopted a resolution against the creation of national railroad boards of labor adjustment, as advocated by the organized railway employes, according to a statement issued by the Chamber December 2.

Local, regional or national boards of adjustment may be set up under the transportation act for the settlement of controversies not directly involving wage disputes. The employes are in favor of national boards, but the majority of the carriers are for local boards, the Chamber says.

"In the opinion of the board," says the resolution adopted, "the establishment of national adjustment boards as desired by representatives of the several organizations of the employes would tend to bring about a state of nationalization of the railroads of the United States and, eventually, to produce the same result in all industries, producing a constantly increasing cost of transportation and production, to the incalculable injury of the public at large and injuriously affecting both the employers and the employes, in the ultimate result.

"The functioning of such national boards of labor adjustment will inevitably lessen efficiency and impair the discipline necessary to the successful operation of the railway systems of the United States under private control, subject to government regulation.

"Such national boards of adjustment will effectually prevent open shop operation, under which the employer and the employe may enter into and determine the conditions of employment relations with each other, and thereby impair the successful conduct and full development of the transportation systems, in the first instance, and of all industrial establishments when this form of nationalization is extended to them, as will inevitably be extended in case it is established in connection with the railroad systems of the United States.

"The result of the operation of such national railroad boards of labor adjustment will make impossible intelligent and practical co-operation directly between employers and employes, based upon mutual recognition of their community of interest involved in the sucess of the particular railway or industrial establishment in which they are associated.

"This board is opposed to any procedure which now or hereafter will result in the establishment of national labor adjustment boards, as advocated by the representatives of the several organizations of railroad employes."

A report of the Chamber's railroad committee, which accompanies the resolution of the board, points out that representatives of organized railroad employes are urging that there is power inherent in the Railroad Labor Board to create national adjustment boards and to endow them with powers national in scope. This position is attacked by the railroad committee, which argues that failure to establish such boards by agreement renders nugatory provisions of the transportation act making possible their creation. So decidedly are the views of railroad officials and the representatives of organized railroad employes at variance as to the nature of the boards, there is small prospect, says the committee, of their being established by agreement.

A preamble to the resolution adopted by the directors declares the public interest is involved in that no provision is made for public representation on the proposed adjustment boards. It points out that failure of the carriers and their employes to come to an agreement indicates that the two parties are not making every reasonable effort and are not adopting every available means to avoid interruption of the operation of the roads, as was made clearly their duty under the transportation act.

## TENTATIVE VALUATION

*The Traffic World Washington Bureau*

Supplemental tentative valuations have been issued in Valuation Docket No. 4, pertaining to the Kansas City Southern and its subsidiaries, the chief purpose of which is to give Samuel W. Moore, attorney for the carrier interests involved, a hearing, if he desires, on the rule for depreciating general expenditure accounts, and the account for interest during construction. The supplemental tentative valuations were declared, in terms, as follows:

It is ordered, That the following be, and they are hereby declared to be, supplemental tentative valuations of the Kansas City Southern Ry. Co., the Arkansas Western Ry. Co., Fort Smith & Van Buren Ry. Co., Kansas City, Shreveport & Gulf Ry. Co., the Kansas City, Shreveport & Gulf Terminal Co., the Maywood & Sugar Creek Ry. Co., Port Arthur Canal and Dock Co., the Poteau Valley R. R. Co., and Texarkant & Ft. Smith Ry. Co. as of June 30, 1914:

Accounts 71 to 77, inclusive, general expenditures accounts, except Account 76, interest during construction.—That the amounts stated as cost of reproduction new of these accounts shall be depreciated to the same extent as the accounts to which they apply.

Account 76, interest during construction.—That the amounts stated as cost of reproduction new of this account shall be depreciated to the same extent as the accounts to which it applies.

According to the explanation given in the office of Director Prouty, Mr. Moore, as attorney for the Kansas City Southern interests, made objections to rulings made by the Commission. They were overruled. In connection with the overruling, the Commission announced that the rules for depreciating the accounts before mentioned would be as hereinbefore set forth.

After that had been done it was pointed out that the Kansas City had not been heard on the rules herein set forth because they had not been made a part of the tentative valuations or final valuations placed on the Kansas City Southern properties.

Promulgation of the rules for depreciating the accounts involved and saying that they shall be applied to the accounts of the companies constituting what is known as the Kansas City Southern, lays the foundation for an attack upon them by the Kansas City Southern, if it thinks the orders adversely affect the tentative and final valuations.

### CAR SERVICE CIRCULAR CANCELLED

The car service division of the A. R. A. in Supplement No. 3 to Circular CCS-20, issued to railroads November 29, said: "Special instructions contained in the above circular under date April 19, 1920, and supplements No. 1, dated June 9, and No. 2, dated September 13, are hereby cancelled. It is believed that the normal return of ventilated box cars to their owners in accordance with car service rules will fully protect the situation."

## LUMBER PENALTY CHARGE

*The Traffic World Washington Bureau*

Agent Fairbanks, in Supplement No. 5 to his I. C. C. 8, generally effective January 20, provides for a continuance of the ten-dollar-a-day penalty charge on cars of lumber held for reconsignment beyond free time. It otherwise would expire January 1. This item, by a special note, is made effective January 2. Transit lumber interests are expected to continue their opposition.

## ATTACK ON PULLMAN INCREASE

*The Traffic World Washington Bureau*

Further hearing on the complaint of the United Order of Commercial Travelers against the Pullman Company (No. 11567) was postponed at a hearing before Examiner Barclay in Washington, November 29, until some date beyond May 1, 1921, so that more definite figures could be presented as to earnings, volume of traffic, and cost of operation. The complaint attacks the 20 per cent increase in Pullman fares, which became effective May 1, 1920.

The suggestion that the hearing be postponed was made by the representatives of the complainant after considerable testimony as to present cost of operation and earnings had been heard. Officials of the Pullman company testified that Pullman travel had decreased considerably since the application of the 50 per cent surcharge on travel in Pullman cars which was ordered by the Commission in Ex Parte 74.

Representatives of the commercial travelers said a complaint would be filed attacking the 50 per cent surcharge.

## TELEPHONE REVENUE

*The Traffic World Washington Bureau*

Sixty-six telephone companies that have annual operating revenues in excess of $250,000 each had an operating income of $5,523,720 in August, a decrease of $2,279,010 when compared with the operating income of $7,802,730 in August, 1919, according to compilations made by the bureau of statistics of the Commission.

Telephone operating revenues for August amounted to $40,770,079 as against $35,546,924 in August, 1919; telephone operating expenses, $32,713,593 as against 25,334,455 in August 1919; net telephone operating revenues, $8,056,486 as compared with $10,212,469 in August, 1919, or a decrease of $2,155,983.

In the eight months of 1920 ending with August and in the corresponding period of 1919 the figures are as follows: Telephone operating revenues, $317,550,595 and $263,738,918, an increase of $53,811,677; telephone operating expenses, $243,298,572 and $192,977,810, an increase of $50,320,762; net telephone operating revenues $74,252,023 and $70,761,108, an increase of $3,490,916; operating income, $52,798,723 and $51,735,153, an increase of $1,063,570.

## PACKERS CASE POSTPONED

*The Traffic World Washington Bureau*

Illness of the attorneys for the carriers in the case of the National Wholesale Grocers' Association of the United States against the Director-General et al. (No. 10745), in which the complainant alleges discrimination against the wholesale grocers and in favor of the packers as to peddler car service and mixing rules, caused the Commission to postpone indefinitely the argument in the case which was to have been begun December 1. The case probably will be set for argument some time in January or February.

The Commission was informed that Kenneth Burgess, counsel for the Western carriers; James Stillwell, counsel for the Eastern carriers, and N. W. Proctor, counsel for the L. & N., who expected to argue the railroads' side of the case, were not able to come to Washington on account of illness. The postponement was agreed to by Clifford Thorne, for the association; Ross D. Rynder, for Swift & Co., Walter E. McCornack, for the interior Iowa packers; Luther M. Walter for Morris & Co., H. K. Crafts for Armour & Co., George P. Boyle for Kingan & Co., and others.

### C. C. C. & ST. L. NOTES

Authority to issue $3,944,000 of 6 per cent promissory notes of approximately $262,933 each, to be made payable to the New York Central, is asked by the Cleveland, Cincinnati, Chicago & St. Louis in a petition filed with the Commission. The applicant also asks authority to issue a 6 per cent ten-year promissory note for $4,560,000, to be made payable to the New York Central; to issue $4,560,000 of its 6 per cent refunding and improvement mortgage bonds dated July 1, 1920, and maturing July 1, 1935, said bonds to be pledged for the note of $4,560,000; to issue $4,189,000 of its 6 per cent refunding and improvement mortgage bonds dated July 1, 1919, and maturing July 1, 1929, and to issue $113,000 of 6 per cent ten-year promissory notes to be made payable to the New York Central. The applicant also asks authority to guarantee a 6 per cent ten-year promissory note of the Cincinnati Northern, made payable to the applicant. The issuance of the notes is in connection with the execution of the New York Central's equipment trust and to meet 25 per cent of the cost of equipment under that trust and to pay for additions and betterments to equipment at a cost of $529,000.

### C. R. I. & P. NOTES

Authority to issue its rent notes for $4,421,000 in connection with participating in the National Railway Equipment Corporation equipment trust for the purchase of equipment of that amount is asked in a petition filed with the Commission by the Chicago, Rock Island & Pacific. The company proposes thus to finance the purchase of 15 Santa Fe locomotives at $78,673 each; 10 Mikado locomotives at $66,705 each; 10 mountain locomotives at $70,103 each; 50 cabooses at $4,463 each, and 500 50-ton gondolas at $3,300 each.

### MICHIGAN CENTRAL NOTES

The Michigan Central Railroad Company has filed a petition with the Commission asking for authority to issue $3,930,000 of 6 per cent promissory notes of $262,000 each to be made payable to the New York Central and to mature serially from 1921 to 1935. It also asks for authority to issue a 6 per cent ten-year promissory note in the sum of $613,000, also to be made payable to the New York Central. The notes are to be given for a loan to provide 25 per cent of the cost of equipment under the New York Central equipment trust of 1920, and to meet the cost of additions and betterments to equipment at an estimated cost of $1,885,000. The company also requests permission to issue $507,000 of its 6 per cent refunding and improvement mortgage bonds dated July 1, 1920, and maturing July 1, 1935, the purpose being to pledge them for the note of $613,000.

### NORFOLK SOUTHERN NOTES

The Norfolk Southern has filed an application with the Commission asking for authority to issue ten-year first lien equipment trust notes to the extent of $222,000, to bear 6 per cent interest, and to be made payable in October, 1931. It also asks authority to issue $200,000 of its first and refunding mortgage bonds, dated February 1, 1911, and to issue note of $111,000 and $200,000 to be given to the Secretary of the Treasury, along with the equipment notes and the bonds, as security for a loan from the revolving fund.

### LOAN TO BOSTON & MAINE

The Commission has approved a loan of $6,656,479 to the Boston & Maine Railroad, to aid that carrier in providing itself with locomotive equipment and certain additions and betterments to existing equipment and to its roadway and structures at a total estimated cost of about $7,869,000. The company itself is required to finance about $1,212,000 to meet the loan of the government.

## RAILROAD CONSOLIDATION

(Continued from page 1060)

the Commission has agreed on a tentative plan for consolidation it must give it due publicity and hear all persons who may present objections. The law provides that after these hearings are held the Commission shall adopt a plan for consolidation and publish it, but it may, at any time after that, on its own motion or on application, reopen the subject for changes or modifications. All consolidations permitted by other parts of the law, under the supervision and consent of the Commission, must be in harmony with this general plan. The act then goes on to provide that it shall be lawful for two or more railroads to consolidate their properties or any parts of them into one corporation. Such consolidations must be approved by the Commission and there are restrictions and rules laid down with respect to such consolidations. The carriers affected by any order made by the Commission under these provisions of the law are relieved specifically from the operation of the so-called "anti-trust laws" and of all other restraints or prohibitions by state or federal law in so far as is necessary to enable them to do the things authorized or required by any order of the Commission made under these provisions of the transportation act.

## WANTS LARGER DIVISIONS

*The Traffic World Washington Bureau*

New England trunk lines are not the only common carriers in that part of the country that think their financial condition is such as to demand attention at the hands of the Commission. The Moshassuck Valley Railroad Company, an industrial road that has passed through the Commission's gauntlet so successfully that the handicap of being closely affiliated with an interest that provides large tonnage for it has been lessened, has prepared a formal complaint asking for larger divisions from its trunk line connections. Its direct connection is with the New Haven. Through that trunk line it has connection with all other railroads in the country. Therefore, its complaint is directed against the New Haven, as the first or principal defendant, and the whole list from the Aberdeen & Rockfish down to the Zanesville & Western.

In the complaint Francis B. James and his associates, as attorneys for the Moshassuck Valley, allege that the divisions accorded to that carrier are unjust, unreasonable, inequitable and otherwise in violation of the interstate commerce law. Continuing, they say: "The condition of the Moshassuck Valley Railroad Company is desperate and its necessities and its right to increased divisions are pressing and urgent.

"The desperate condition of the Moshassuck Valley Railroad Company and its necessities and its right to increase divisions are illustrated and shown by the following:

"During the year 1918 it sustained a deficit of $13,565.20 in net railway operating income; during the year 1919, it sustained a deficit of $26,369.78 in net operating income; and that for 1920, on the basis of a careful estimate, it will sustain a deficit in net railway operating income of between $40,000 and 50,000, such estimate for 1920 being based upon a 40 per cent increase in the divisions following the decision of the Commission in Ex Parte 74."

## WHEELING AND LAKE ERIE BONDS

*The Traffic World Washington Bureau*

The Wheeling & Lake Erie Railway has applied to the Commission for authority to issue $1,528,000 of its 5 per cent refunding mortgage bonds, Series "B," to reimburse its treasury for expenditures made therefrom for additions and betterments, and the acquisition of applicant's receiver's equipment trust certificates and of applicant's equipment gold notes. The bonds will not be sold but will be pledged for loans from the government, for the funding of the applicant's indebtedness to the government growing out of federal control and for pledge with the trustee of the equipment trust of the National Railway Service Corporation, it is stated in the application.

In a separate application the Wheeling & Lake Erie asks permission to participate in the equipment trust of the National Railway Service Corporation for the purpose of leasing and finally acquiring equipment of the approximate value of $8,260,000, consisting of 2,000 50-ton steel gondola freight cars and 1,000 40-ton steel underframe box cars. In connection with the same transaction it asks authority to endorse or guarantee the notes of the service corporation to be given to the Secretary of the Treasury for a loan of not less than 40 per cent of the cost of the equipment; to issue its rent notes in an amount not to exceed $13,629,000, and to pledge certain of its securities as additional security under the equipment trust agreement.

### N. Y. C. SECURITIES

The New York Central has filed an application with the Commission for authority to issue securities in connection with the execution of its 1920 equipment trust and to pay the cost of additions and betterments to equipment and to roadway and structures. It asks authority to issue $6,494,000 of its 6 per cent refunding and improvement mortgage bonds; to issue $9,600,000 of its 6 per cent equipment trust gold certificates; to guarantee $3,930,000 of Michigan Central 6 per cent promissory notes; to guarantee $3,944,000 of Cleveland, Cincinnati, Chicago & St. Louis 6 per cent promissory notes; to guarantee Michigan Central 6 per cent promissory note of $613,000; to guarantee Cleveland, Cincinnati, Chicago & St. Louis 6 per cent promissory notes of $4,560,000 and of $113,000; to guarantee 6 per cent promissory note of $214,000 of Toledo & Ohio Central; to guarantee 6 per cent promissory note of $60,000 of Zanesville & Western; to guarantee 6 per cent promissory note of Kanawha & Michigan for $256,000; to guarantee 6 per cent promissory note of Lake Erie Western for $609,000; to guarantee 7 per cent promissory demand note of Cleveland, Cincinnati, Chicago & St. Louis for $4,000,000. The above notes are all payable to the New York Central and have been referred to in applications filed by the several companies named with the Commission.

### NOTES FOR REFRIGERATOR CARS

Authority to issue thirty-six notes for $5,055.55 each as a portion of the purchase price of 100 refrigerator cars is asked by the Minneapolis & St. Louis Railroad Company in an application filed with the Commission. The total cost of the equipment is given as $227,500. The company states that it does not now possess any standard refrigerator cars of its own and that the territory it serves is in need of such equipment.

### KANSAS CITY SOUTHERN SERVICE

The Kansas City Southern Railway Company announces that it is now operating an extra manifest train leaving Kansas City at 6 p. m. daily to Texarkana and South, for the purpose of expediting movement of manifest freight to all points in the Southwest. This train arrives at Texarkana at 3 a. m., second morning, giving sufficient time to reach all through service on the Texas & Pacific and Cotton Belt Railways; arrives at Shreveport 7 a. m., second morning, making connection with all fast service, leaving Shreveport via V. & S. P., T. & P., L. R. & N. and H. E. & W. T. (Southern Pacific Lines). Connections are made with H. E. & W. T. train leaving Shreveport at 2 p. m., arriving at Houston at 8:30 a. m. next day. This train, in addition to regular schedule trains No. 55 and No. 51, makes it possible for the road to render its best service out of Kansas City to all points on its line and to Dallas, Fort Worth, Waco, Houston, San Antonio and points in Texas; Alexandria, Baton Rouge, Monroe, New Orleans and points in Louisiana.

### PREFERRED MOVEMENT OF CHEMICALS

In Supplement No. 1 to Circular CSD-68, the car service division of the A. R. A. says to railroads:

"As a matter of record, the above circular, issued under date of August 6, referring to preferred movement of chemicals for water purification, is hereby cancelled, as present car supply is sufficiently ample to protect requirements."

## Digest of New Complaints

**No. 11918, Sub. No. 1.** E. I. Du Pont de Nemours & Co. vs. J. B. Payne, as agent.
Unjust, unreasonable and discriminatory rates on sulphuric acid from West Side Avenue, Jersey City, N. J., to Gibbstown, N. J., as compared with rates to nearby points. Asks for just

**No. 11947.** Armour & Co. vs. Cent. of Ga. et al.
Unjust and unreasonable rates on hogs from Jacksonville, Fla., and Montgomery, Ala., to Fort Worth, Tex. Asks cease and desist order, just and reasonable rates and reparation of $10,769.95.

**No. 11949.** The National Refining Co., Cleveland, O., vs. J. B. Payne, as agent.
Alleges overcharge on shipments of petroleum and its products from Findlay, O., to Joliet, Ill., during period from December 12, 1918, to September 11, 1919, in that rate of 20½c was applied instead of rate of 19½c. Asks reparation of $43.35.

**No. 11950.** Minnesota and Ontario Paper Co. et al., International Falls, Minn., vs. Nor. Pac. et al.
Excessive, unjust and unreasonable rates on newsprint paper between complainants' mills and various interstate destinations. Ask for just and reasonable through routes and joint rates.

**No. 11951.** Ætna Explosives Co., Inc., New York, vs. Mo. Pac. et al.
Against a rate of 30c on glycerine from Kansas City, Mo., to Fayville, Ill., as unjust, unreasonable and unduly prejudicial in comparison with rate of 22c to Thebes, Ill. Asks for reparation.

**No. 11952.** Dave Levite, doing business under name of the Natchez Junk Co., Natchez, Miss., vs. Tex. & Pac. et al.
Unjust and unreasonable rates on four carloads of scrap iron from Willets and Ferriday, La., to Natchez, Miss. Asks cease and desist order and reparation.

**No. 11953.** E. I. Du Pont de Nemours & Co. vs. J. B. Payne, as agent, et al.
Unjust and unreasonable rates on shipments of wet nitrocellulose, packed in boxes, from Hopewell, Va., to Hoskell, N. J., on November 12, 1918, and reconsigned to Parlin, N. J. Alleges that defendants failed to handle request for diversion to Parlin promptly and that excessive charges resulted. Asks reparation of $1,730.02.

**No. 11954.** The Otto Weiss Milling Co., Wichita, Kan., vs. A. T. & S. F. et al.
Unjust and unreasonable rates on alfalfa meal originating at Winfield and Viola, Kan., as hay tonnage and milled in transit at Wichita, Kan., and forwarded to Cairo, Ill. Asks reparation.

**No. 11955.** Albers Bros. Milling Co., San Francisco, vs. John Barton Payne, as agent.
Unjust, unreasonable, unjustly discriminatory and unduly and unreasonably prejudicial rates on grain, grain products, cereals and cereal products, from Oakland, Cal., in comparison with the rates from South Ballejo. Asks for reasonable rates and reparation on shipments made during Federal control.

**No. 11956.** Zion Institutions and Industries, Zion, Ill., vs. C. & N. W.
Against a rate of 12½c on lumber from Bryant, Wis., to Zion, Ill.; also against rates on lumber from other points in Wisconsin to Zion, as unjust and unreasonable. Asks for a cease and desist order and reparation.

**No. 11957.** North Pacific Millers' Assn., Tacoma, Wash., vs. Nor. Pac.
Unjust and unreasonable charges on grain and grain products through the refusal of the carrier to furnish cars of designated minima, alleging that the defendant furnished cars without regard to such request and required complainants to pay on the minima of the cars so furnished. Asks for a cease and desist order and reparation.

**No. 11958.** Valentine and Henrietta M. Scheidell, doing business as the Sullivan County Creamery Co., Sullivan, N. Y., vs. John Barton Payne, as agent.
Unjust and unreasonable rates on ice from Poyntelle, Pa., to Cocheton and Callicoon, N. Y., shipped in the spring of 1919, the allegation being that the agent of the railroad quoted a rate of $1.84 a ton and the carriers charged $3.40. Asks for a cease and desist order and reparation.

**No. 11959.** Kurth Malting Co., Milwaukee, vs. Payne and C. M. & St. P.
Against a rate of $1.24 per 100 on barley malt from Great Falls, Mont., to Milwaukee, as unjust and unreasonable because and to the extent of excess over 43.5c. Asks for reparation.

# Docket of the Commission

**Note. Items in the Docket marked with an asterisk (*) are new, having been added since the last issue of The Traffic World. Cancellations and postponements announced too late to show the change in this Docket will be noted elsewhere.**

**December 6**—Salt Lake City, Utah—Before Public Utilities Commission of Utah:
**Finance Docket 36**—In the matter of the application of the Utah Terminal Ry. Co. for a certificate of public convenience and necessity to construct a line of railroad in Utah.

**December 6**—Washington, D. C.—Examiner Keene:
**I. and S. 1237**—Transit rules and regulations on fresh apples.

**December 6**—Reno, Nev.—Examiner Healy:
11914—In the matter of intrastate rates, fares and charges of the Sou. Pac. Co. and other carriers in the state of Nevada.

**December 6**—Chicago, Ill.—Examiner Archer:
11729—Rock Products Traffic League vs. C. B. & Q. et al.
11799—Same vs. Same.
11810—Same vs. C. R. I. & P. et al.

**December 6**—Houston, Tex.—Examiner Howell:
11896—Houston Chamber of Commerce and W. C. Munn Company vs. Houston & Texas Central et al.

**December 6**—Shreveport, La.—Examiner Kephart:
11901—L. A. Norris vs. Tex. & Pac. et al.

**December 6**—Tulsa, Okla.—Examiner Wagner:
11842—General Iron Works vs. C. C. C. & St. L. et al.

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# The Traffic World

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## ANONYMOUS COMMUNICATIONS

It seems necessary for us to call the attention of subscribers to the fact that in our Open Forum we do not print communications unless the names of the writers are given for use, and in our Questions and Answers column we do not answer anonymous letters. In the latter column we do not, of course, print the name of the person making the inquiry, but it is necessary that we know who he is that we may assure ourselves that he is really one of our subscribers and that he is asking the question in good faith. Our reason for insisting on signatures of Open Forum communications ought to be obvious. We cannot permit our columns to be used by persons who have views to express but who are unwilling to appear as the authors of those views. We make this explanation here for the reason that often, for the very reason that no names are signed to communications, we are unable to explain by personal letters to individuals.

## TRAFFIC CLUB DISCUSSIONS

The Traffic Club of Chicago deserves commendation for the plan which it has so successfully put into practice for a series of "get-together traffic discussions." This plan is to have, twice a month, meetings for the consideration of questions of interest to traffic men. Men to lead the discussion are chosen from both the railroad and the industrial ranks and after these have presented the case as it appears to them there is a general discussion in which all may participate by asking questions or stating their own views. The subject for the first meeting was the proposed charge for spotting, and for the second meeting it was claims, with special reference to the McCaull-Dinsmore decision. About two hundred were present at each meeting and great interest was shown. The interest and attendance were not confined, as might be supposed, to the younger and less experienced men in traffic in search of information, but many of the best known men in Chicago traffic circles were present and participated actively—and with profit, no doubt.

It may be that this idea is not original with the Traffic Club of Chicago. If not, we beg the pardon of the originator and will give him due credit when he appears. But whoever was its originator, it is good. We have always held that a traffic club should be something more than a social organization, though its social features fully justify it. But in a traffic club composed of both railroad and industrial traffic men there is opportunity for mutual benefit that ought not to be neglected. In the first place, it is profitable, from an educational point of view, for men to gather and discuss intimately the problems that confront them in their daily work and to have in this discussion the benefit of the views of specialists chosen to lead it because they are particularly well informed. But it is perhaps still more valuable—or, at least, valuable in a wider sense—for the men generally supposed to be on opposite "sides" of the questions discussed, to meet thus informally and exchange views frankly and in the spirit of good fellowship. It is in this spirit that transportation problems, we firmly believe, must be settled between carrier and shipper; and though the traffic club cannot settle them in any final way, the manner in which it is meeting and considering them contributes materially to the proper spirit and to an understanding of proper methods. We hope other traffic clubs will adopt a similar scheme. They will find it not only valuable as a club activity in the sustaining of the interest of members but, as we have said, a means of helping bring about the spirit of co-operation that we believe is to save the transportation situation.

After all, if the two parties to a given transaction deserve the regard of each other and have that regard for each other, there is little need for laws or regulations. There is generally a definitely marked right or wrong, justice or injustice, in any controversy—a claim, for instance. There must always, of course, be the law and its authoritative interpretation for the man who is not given to straight dealing and for the prevention of discrimination likely to arise out of good fellowship, but when shipper and carrier come to understand and esteem each other as they should, and to take the broader view of transportation, in which they are both interested in much the same way, we shall have more agreement and less fighting.

A claim—to use that illustration again—ought not to be made merely because the claimant thinks he can "put it over." Neither ought it to be declined merely because the carrier thinks it can "get by" with a denial. It ought to be made only when there is justice behind it and for the amount only that is justified. It ought to be paid in the same spirit, and the presumption should be that each side is trying to settle the thing on a just and business-like basis. As the men in industry and those employed by the railroads learn to know each other better and to trust each other more as a result of that knowledge, this will become increasingly the method of doing business.

## VIEWS OF MR. EASTMAN

Commissioner Eastman is fast identifying himself as a man not only out of sympathy with the transportation law which the body of which he is a member is charged with administering, but out of sympathy also with the interpretation placed by his colleagues on that law and with their policy in enforcing it. The latter is shown by his dissent from the decisions recently handed down in the matter of the Commission's jurisdiction over intrastate rates. The former he has shown in many ways, most recently by a speech before the Boston Chamber of Commerce. We would not deny Commissioner Eastman's right to entertain the views he holds—or to express them when called on to render a decision or to avow his convictions in any other manner. That he has done in the intrastate rate cases, as is perfectly proper. We are not so sure as to the propriety of his going out of his way to damn the law under which we are now trying to operate the railroads. Some of his colleagues may entertain the same views that he does. We do not know—except as to Mr. Woolley. But even if they do, they at least (again with the exception of Mr. Woolley) have what seems to us the wisdom to restrain themselves.

But no matter what doubts we may entertain as to the propriety of Mr. Eastman's course, we have none as to the soundness of his views. We think them extremely unsound. He announces that he is not alarmed by the mere word "socialistic," and that he would hold himself weak in mind and poor in spirit if he were to reject what otherwise seemed good for the country because it bore such a label, or if he were to accept what seemed inferior because it might be called "Americanism." That is a brave and sound sentiment, to be sure. But Mr. Eastman is certainly frightened by something. Perhaps it is the parlous situation of the roads in the New England territory from which he comes. On no other theory than something akin to fright can we conceive of a wise and judicious member of the Interstate Commerce Commission thus giving aid and comfort to the Plumb planners and other radicals at a time like this, when we are struggling to bring about a rehabilitation of the railroads under a new law that—no matter what may prove to be its faults—at least has many strong features and which has had no time for a test. Yet Mr. Eastman takes it on himself to revive the agitation in favor of government ownership and employe operation. In order that we may do him no injustice we present his exact language:

So much for the question of ownership. I come now to the question of management, which in many respects is more difficult. How often have you been told that what I am now suggesting may be sound in theory, but that the beauty of the theory is far overbalanced by the practical danger of entrusting these great railroad properties to the deadening mercies of an inefficient, if not corrupt, political bureaucracy? I can appreciate this point of view, for not many years ago I thought the same. Experience in governmental service and an opportunity to observe rather closely the private management of the railroad companies have modified this opinion. I say this without disparagement of their executives, for I know the difficulties under which these men have labored. It would be possible to call to your minds the gross waste and abuse of power which in so many notable cases have attended the private management of our railroads; but I am not going to do that. Instead, I am going to admit that management by a political bureaucracy, as well as private management, does present many serious dangers, although not so serious as many think. There is danger of graft; there is danger of waste; there is, above all, danger of too great centralization.

What I do not admit is that the problem is insoluble. It is a problem, I think, that has never been faced and dealt with courageously and constructively. It is not a problem which the American nation, with its creative and inventive genius, needs to fear. It is not, in my estimation, as difficult a problem to work out as the successful functioning of a dual system of private management and rigorous public regulation. I do not pretend to have a ready-made plan, for I lay no claims to the genius which its construction would require. It calls for the sincere, patriotic labor of many minds. All that I venture to offer are certain suggestions. The two great dangers to avoid appear to be overcentralization and bureaucratic inefficiency. The first is a question of organization, such as arises in the conduct of any great industry. The solution lies, I think, in supplementing a central staff by regional organizations with power to deal directly with many matters. As for the second danger, why a political bureaucracy at all? As a solution, I suggest representation in the management, not only of the government, but of the two great groups which have most reason to desire the safe and efficient operation of the roads—organized business and organized labor. I feel confident that if thought be given to the question, a way may be found for securing representation of these groups which will be more satisfactory in its operation than the methods by which widely scattered and unorganized stockholders of great railroad companies now select their directors.

I fancy that some among you will not welcome the suggestion that railroad employes be represented in the management, and I can understand your objections. Organized labor, like organized capital, has a great deal to learn. Above all it needs to learn that it cannot, with any advantage to itself, leave out of consideration in its policies the interest of the great mass of people who are neither members of unions nor employers of labor. It can ill afford to indulge in a policy of autocracy. Nevertheless, I venture to predict, knowing all the dangers of prophecy, that the principle will ultimately be recognized that employes of an industry are fairly entitled to representation in its management. Why is a man who gives himself to an industry less entitled to a voice in its management than a man who gives his dollars? I know that some of you men whom I am now addressing have already recognized this principle with advantage in your private business. In the case of the railroads, we are dealing for the most part with an exceptionally intelligent and well-educated body of labor. My earnest conviction, which I offer for what it may be worth, is that far better cooperation can be secured from railroad labor if it is permitted to learn and understand at first hand the problems of management and to share in the responsibility.

## NEED OF INLAND WATERWAYS

*The Traffic World Washington Bureau*

Lack of adequate and cheaper transportation facilities is seriously handicapping the industrial development of the Mississippi Valley, J. W. Alexander, Secretary of Commerce, said in an address before the sixteenth convention of the National Rivers and Harbors Congress in Washington, December 8, on the subject of "Inland Waterways and the Merchant Marine."

"Without these facilities, whether by rail or by water or by both," said he, "our foreign trade will be seriously affected, and whatever causes affect our foreign trade will be felt by our American merchant marine."

Secretary Alexander reviewed the increases in freight rates which have been authorized by the Interstate Commerce Commission since 1914.

"The effect of these increases in freight rates," he said, "in an economic sense, has been to increase the distances between industrial and commercial centers and remove the hinterland proportionately that much farther from the seaports through

which our exports and imports flow, and makes it correspondingly more difficult for us to furnish cargoes for our ships and compete with other nations favored with cheaper transportation costs in the world trade."

The development by the government of the Mississippi-Warrior rivers service was discussed by Mr. Alexander. He said:

"With the facilities available and under capable management and with hearty co-operation of the communities affected, it should be demonstrated whether or not transportation on the waterways will be economically practicable. Once proven that it is practicable these services should be extended to the upper Mississippi and principal tributaries of that river.

"Looking at this question from any angle we care to view it, the conclusion is manifest that the future prosperity of the great Mississippi Valley demands more adequate and economical transportation facilities, and the only practicable way to secure these would seem to be to utilize our great waterways and make them arteries of commerce, not only to the gateways on the Gulf of Mexico but from Duluth by way of the Great Lakes to the Atlantic.

"The twin cities, Minneapolis and St. Paul, are keenly alive to this situation, as are the great commercial and industrial centers on the Great Lakes.

"The Department of Commerce was created to promote our foreign and domestic commerce, hence may be called very aptly the business department of the government. The department is in a position to visualize some of the obstacles more or less serious that must be removed to promote the best interests of producers, distributors, and consumers alike in our domestic trade and commerce, and make it possible under normal conditions to find a ready foreign market for our surplus products. I have tried to point out one of these very serious hindrances or obstacles, and that is the lack of cheap and adequate transportation facilities. This problem affects production and distribution and applies to every section of our country, but is of deepest concern at this time and, in view of the very great increases in rail rates, to those communities embraced in the Mississippi Valley. The situation as it affects the Mississippi Valley will become more serious every year.

"There is no reason to expect that rail rates can be lowered in the near future, and while it is no doubt true that the efficiency of the service is increasing since the return of the railroads to their owners for operation, yet they will not be able to meet the increasing demands made upon them. This was demonstrated this fall when the Interstate Commerce Commission was called on to allocate all the open cars available to relieve the threatened coal famine this coming winter in New England and in the Northwest, while building operations in our great cities and highway construction and other internal improvements had to be suspended or delayed. The shortage of cars was seriously felt also in the movement of grain and fuel and other staple commodities in other parts of the country.

"The farmers stand to lose billions of dollars by reason of the slump in the prices of farm products. The situation is indeed serious if not distressing.

"There is great demand for our surplus cotton and foodstuffs. Not only is the lack of facilities to extend long-time credits of concern to the farmers, but if such credits are provided, the price the farmer will receive for his products will be very seriously affected by the high costs of transportation.

"All will agree that if we would build up and maintain a great American merchant marine we must develop and foster a great foreign trade. The two go hand in hand. The Department of Commerce is deeply interested in both propositions, hence my concern as regards the transportation facilities of the Mississippi Valley, for there the situation seems to be most acute.

"The larger part of our surplus for export must come from this great region. The question is of vital interest not alone to that section but to the whole country. Hence I am gratified to know that the great commercial, industrial, and financial organizations affected are determined more than ever before to find an outlet to the sea not only by the Mississippi River and its tributaries, but by the Great Lakes as well.

"In other words, they are determined to bring the benefits of ocean transportation nearer to these great centers of industry and commerce, and the only way to do so is by developing these potential highways of commerce and secure for themselves more adequate and cheaper transportation facilities.

"This can be done without injury to our rail lines. It is the opinion of those who have given the question very careful consideration that it will contribute to the prosperity of both, hence should have their hearty co-operation.

"It is my hope and expectation that the deliberations of the National Waterways Congress may result in further substantial progress being made in the accomplishment of the great purpose for which it was organized."



# REVENUE FREIGHT LOADING

*The Traffic World Washington Bureau*

Loading of commercial freight fell below the 800,000 mark in the week ending November 27, when 797,673 cars were loaded, according to the report of the car service division of the American Railway Association. In the corresponding weeks of 1919 and 1918 the loadings were 739,197 and 735,628 cars, respectively. In the preceding week this year the loadings amounted to 880,528 cars.

Compared with loadings in the corresponding week of 1919, the week ending November 27 showed decreases in the loading of grain and grain products, live stock, forest products and miscellaneous freight and increases in the loading of coal, coke, ore, and merchandise, L. C. L.

The drop of 82,855 cars in one week is attributed in part to the fact that the week of November 27 included Thanksgiving.

The total loading of revenue freight by commodities in the week ending November 20, as compared with the corresponding week in 1919, according to the weekly report of the car service division of the American Railway Association, was as follows:

Grain and grain products, 36,442 and 44,470, a decrease of 8,028 cars; live stock, 40,427 and 46,046, a decrease of 5,619 cars; coal, 216,322 and 126,794, an increase of 89,528 cars; coke, 13,259 and 10,483, an increase of 2,776 cars; forest products, 54,760 and 59,516, a decrease of 4,756 cars; ore, 37,009 and 31,663, an increase of 5,346 cars; merchandise, L. C. L., 199,922 and 156,612, an increase of 43,310 cars; miscellaneous, 282,387 and 379,017, a decrease of 96,630 cars.

Loading of commodities by districts in the week ending November 20 as compared with the corresponding week in 1919 was as follows:

Eastern district: Grain and grain products, 5,611 and 7,429; live stock, 4,088 and 4,341; coal, 53,935 and 33,075; coke, 2,395 and 3,517; forest products, 6,590 and 7,644; ore, 5,266 and 3,522; merchandise, L. C. L., 47,518 and 31,773; miscellaneous, 78,825 and 111,179; total, 1920, 204,228; 1919, 202,480; 1918, 209,953.

Allegheny district: Grain and grain products, 2,896 and 3,605; live stock, 4,296 and 4,178; coal, 63,547 and 36,314; coke, 5,959 and 3,957; forest products, 3,872 and 4,917; ore, 8,275 and 6,317; merchandise, L. C. L., 38,083 and 44,386; miscellaneous, 62,525 and 75,176; total, 1920, 189,453; 1919, 178,850; 1918, 192,085.

Pocahontas district: Grain and grain products, 127 and 211; live stock, 176 and 258; coal, 21,074 and 25,551; coke, 1,478 and 1,450; forest products, 825 and 1,336; ore, 211 and 396; merchandise, L. C. L., 2,438 and 135; miscellaneous, 5,116 and 9,168; total, 1920, 31,445; 1919, 38,505; 1918, 37,655.

Southern district: Grain and grain products, 2,643 and 3,398; live stock, 2,466 and 3,276; coal, 30,586 and 10,998; coke, 1,251 and 170; forest products, 16,527 and 18,574; ore, 2,804 and 2,774; merchandise, L. C. L., 37,339 and 19,018; miscellaneous, 35,599 and 59,925; total, 1920, 129,215; 1919, 118,133; 1918, 118,848.

Northwestern district: Grain and grain products, 12,192 and 12,849; live stock, 11,001 and 12,182; coal, 12,463 and 13,174; coke, 1,454 and 775; forest products, 14,615 and 14,679; ore, 17,480 and 15,545; merchandise, L. C. L., 27,713 and 22,245; miscellaneous, 30,980 and 43,855; total, 1920, 127,898; 1919, 135,304; 1918, 122,628.

Central Western district: Grain and grain products, 9,279 and 12,457; live stock, 15,510 and 17,938; coal, 26,888 and 6,172; coke, 562 and 506; forest products, 4,530 and 5,231; ore, 2,807 and 2,786; merchandise, L. C. L., 30,242 and 23,939; miscellaneous, 42,500 and 52,828; total, 1920, 132,318; 1919, 121,857; 1918, 118,153.

Southwestern district: Grain and grain products, 3,694 and 4,521; live stock, 2,890 and 3,873; coal, 7,829 and 1,510; coke, 160 and 108; forest products, 7,801 and 7,135; ore, 166 and 323; merchandise, L. C. L., 16,589 and 15,116; miscellaneous, 26,842 and 26,886; total, 1920, 65,971; 1919, 59,472; 1918, 58,055.

In a note the division states that to get a fair comparison of loading of merchandise L. C. L., the figures for that loading and miscellaneous should be added because carriers in some instances can not separate their L. C. L. and miscellaneous in 1919.

# OPERATING STATISTICS

*The Traffic World Washington Bureau*

In a final summary of operating statistics of large steam roads in September and the nine months ended with September, promulgated by the Commission on December 4, it is disclosed that these roads had 40,651,000,000 net ton-miles in September of this year compared with 38,678,000,000 in September, 1919, an increase of 5.1 per cent. The net ton-miles per freight-train mile decreased from 778 to 767.

The percentage of cars on line to cars owned increased from 91.4 to 93.2; the car-miles per car day increased from 26.7 to 28.4; the net-ton mile per loaded car-mile from 28.4 to 30.1.

In the nine months' period the net ton-miles increased from 286,902,000,000 to 330,964,000,000, or 15.4 per cent; net ton-miles per freight train-mile increased from 726 to 733.

The percentage of cars on line to cars owned, increased from 92.7 to 93.1; the car-miles per car day increased from 22.3 to 24.1 and the net-ton per loaded car-mile from 28.3 to 29.

# Current Topics in Washington

**Maximum and Minimum Rates.**—Without making any observations on the fact, the Commission, in its report on the Inland Empire Shippers' League case, exercised the power given it in the transportation law to establish maximum and minimum rates. It said that the undue prejudice against Portland should be removed by increasing the rates to Puget Sound ports five per cent and reducing the rates to Portland five per cent. No order was issued, but if the railroads will not establish rates as indicated, such an order will be put out and they will have to obey or go to court, if they think they should. In the case of the Puget Sound ports the new rate will be a minimum and in the case of Portland a maximum; that is to say, the carriers will have no authority for making rates to the Puget Sound ports lower than five per cent higher than those now in effect, nor will those serving Portland have any warrant for making their rates higher than five per cent lower than they are now. The action of the Commission has not caused great excitement, probably because, without power to establish minimum rates, the Commission has been doing that thing. It has given permissive orders, indicating what it thought the relationship of rates should be. In that sense, therefore, what has been done in the Inland Empire case is not new. It is true that the form in which this case was disposed of has not been common. In fact, it may be altogether novel in form, but, in effect, the Commission has been establishing minimum rates for the carriers (with their full consent and sympathy) in Shreveport rate situations, ever since the first Shreveport decision. About the only situation, in recent years, over which it could not exercise the degree of control it was suspected of desiring to exercise, arose when the Mobile & Ohio put in a fifteen-cent import rate on blackstrap molasses from Mobile to St. Louis, thereby making domestic producers of sugar in Louisiana uncomfortable at a time when they were in despair because Congress had cut off some of the duty and was threatening to cut off still more. There was a suspicion then that the Commission would have prevented that further blow at the sugar producers of Louisiana by forbidding so low a rate from Mobile. If it had, it is believed, Louisiana sugar production would have held up better than it did and the sugar stringency produced by the war would not have been so sharply felt in the United States as it was when production from Germany, Austria, France and Russia was cut off almost entirely. That blackstrap case is cited merely to show that, even without the power to establish minimum rates, the Commission has been able to handle most situations.

**Danger of Political Temptation.**—There is a fear among men who have gone through nearly every kind of case the Commission has ever had before it, that the possession of the power to establish minimum rates may result in placing political temptation before the rate-making body. By means of freight rate adjustments the policy of the country, when it is protective tariff in complexion, may be strengthened. When the policy is one for revenue (at the custom house) only, the power to make maximum and minimum rates can be used to strengthen that policy. Once, while the protective tariff law of 1909 was still on the statute books, the Commission made a few remarks to the effect that the freight rate on lemons from the Pacific coast had been so adjusted as to deprive the growers of lemons of the benefit that Congress intended to confer on them by increasing the customs rates on lemons; that is to say, Congress had increased the tariff duty on lemons and the railroads had promptly raised their rates, so that, while the California growers of lemons received a higher price in the markets of their own country, the cost of putting their lemons on the market had been increased by the increase in rail rates, so that, in the end, the growers had no more money than they had before Congress acted. The Commerce Court said the Commission had nothing whatever to do with the enforcement of the customs tariff law, and therefore enjoined the order. Did the Commission carry the case to the Supreme Court? It did not, waste of time being not one of the sins ever charged against it. It merely used its blue pencil on the obiter dictum used by the commisisoner who wrote the report and reissued it. No change was made in the order. The California lemon growers got a railroad rate that enabled them to cash in on what Congress had done for them, and the Commission went on about its business. Now, that it has the power to make the minimum rate, it can help distressed sugar or rice growers by the simple process of forbidding carriers to put in import rates below a certain level. By the same sign, if it avoids the inhibition against confiscation, it can order in such low import rates that the country will obtain the benefits, if any, of a customs tariff for revenue only.

**The President's Message.**—President Wilson's message to Congress does not set well with the conservative element among public men, especially that recommendation that a license be required for every shipment in interstate commerce, with a cost tag attached. Under the license system, everything would be "verboten" until some commission in Washington prescribed the terms on which business might be done and granted a license, revocable on the belief of the commission or commissioner that something the licensee had done was not in the "public interest." The Wilson proposal, as viewed by those who do not like the message, is that, by legislative fiat, the public would be declared to have an interest in what Jones did with property he had bought, converted into something else, and then proposed to sell as his own property to persons willing to deal with him, but under no compulsion to do so.

**Cost of Government Operation.**—Another thing in the message that did not set well with many members of Congress, was the President's way of telling about the enormous cost of government operation of the railroads. He said: "The relation between the current receipts and current expenditures of the government during the present fiscal year, as well as during the last half of the last fiscal year, has been disturbed by the extraordinary burdens thrown upon the treasury by the transportation act, in connection with the return of the railroads to private control." The objection to that is the implication that the transportation act caused the burdens, and that, perhaps, if the railroads had not been returned to their owners, there would have been no burdens to be cast on the treasury. The thought is that the statement may be used by advocates of the Plumb plan and other forms of government ownership as a text for misleading those who have not been in such close touch as to know that the burdens were caused by the inability or unwillingness of Director-General McAdoo and his successor to be frank with the people and make freight rates and passenger fares high enough to meet the extraordinary expenses caused by the big increases in wages, the big increases in the cost of materials (caused in part by the withdrawal of man power for war purposes) and the extravagant way in which the subordinates of President Wilson spent the government's money in the cost-plus contract system. That system persuaded dishonest contractors to hire more men than they could use efficiently and to make a profit on the slow unloading of freight cars loaded with materials for government use, because demurrage was an item of cost on which dishonest contractors could make a profit at the expense of the government. The hiring of unnecessary men to raise the cost on which the profit was calculated, raised the price of common labor to high levels, which helped create the silk shirt orgy. The two directors-general, instead of increasing rates to meet the expenditures they had authorized, or for which they created precedents, "passed the buck," so that, eighteen months after the end of the war, the Commission had to make the largest increase in rates ever known, and that, too, when the volume of business was greatest. The men who voted for the transportation act, if the message leads to debate, it is believed, will point out that Congress and the Commission had to assume the duties which the two directors-general avoided, simply to prevent a great wreck, with practically every railroad in the country in the hands of receivers under a load of debts which the corporations could not have handled. The corporations did not have anything to say about the creation of the burdens. The roads were turned over to the executive branch of the government in fair shape. Had they been returned to their owners at the end of federal control, without legislation, they would have been unable to operate even for a week. The government had not paid the rent agreed on. It could not. Mr. McAdoo's rates were not high enough to redeem the promises he had made. The railroad corporations could not have raised rates in time to prevent disaster, so Congress passed the transportation act, to prevent the cataclysm that threatened by reason of McAdoo and Hines being unable or unwilling to manage the properties so as to make the income match the outgo, the margin between the two being more than $1,000,000,000 in twenty-six months.

**Farming Out Repair Work.**—The railroad machinists, one of the organizations with which the Railroad Administration made a national agreement about wages and working conditions, according to William Johnston, president of the International Association of Machinists, object to the railroad corporations having repairs to their engines and cars made by contractors not subject to the terms of the national agreement. When a railroad corporation sends an engine or car out to a custom machine shop or a car or locomotive construction factory, the objecting machinists call the operation "farming out" the repair work. They expect to lay the matter before the Railroad Labor Board. The national agreement, made by the Railroad Administration, does not bind a corporation to do repair work in its own shops. Therefore, when the work is done on the outside, the railroad machinists get furloughs, to which they object. They made the charge against the Erie, the early part of last summer. This

latest objection, filed with Bert M. Jewell, head of the railway part of the American Federation of Labor, is, therefore, a renewal of the effort to compel the railroad corporations to do the repair work in their own shops, notwithstanding that they may be able to get the work done for less by outside contracts. Thus far no governmental agency has ever said that a railroad company shall be deprived of the right to contract for having its work done where it could get it done cheapest.

**Government and the Packers.**—The government and the five big packers who assented to the decree requiring them to get rid of their stockyards, stockyard newspapers, and railroads seem to be getting into such a muddle in their efforts to find a way for carrying out the terms of their agreement that the task of getting out of the original labyrinth will appear simple in comparison with what they will have to do. Morris & Co. made a contribution to complexity by offering to turn their proscribed property over to the court for the appointment of trustees to dispose of it by offering it, first to live stock producers, and then, if they did not want it, to persons living in the vicinity of the stockyards, and if they did not want it, then to anybody who would offer a reasonable sum for it. Attorney-General Palmer, instead of jumping at the chance to accomplish an immediate divorce so far as the Morris defendants are concerned, has filed five pages of objections to the plan, chief of which seems to be that Morris & Co. want to retain the right to say whether the money offered is enough for the property acquired by them, but which, if the plan is accepted, will no longer be under their control for operation, but under the control of the court. Morris & Co. were not joined in that plan by the other members of the big five. They have plans of their own to which Palmer has filed objections. Among those who have no direct interest in the matter, there is an idea that unless the government soon accepts some plan, it will have to proceed judicially and run the risk of losing on the merits of the proposition. That has been the usual outcome of proceedings based on the theory that the five big packers are not in active competition with each other. In the meantime, Senator Kenyon is doing what he can to procure the passage of his bill whereby the whole packing industry, composed of big and little packers, would be put under the revocable license system, so that nothing could be done by a man who wanted to ship meat from one state to another, without permission from a government official.

A. E. H.

## TANK CAR OUTLETS AND OTHER PROJECTIONS

(By Colonel B. W. Dunn, Chief Inspector, Bureau of Explosives).

We are receiving so many letters protesting against the recent prohibition of nipples or other attachments to bottom outlet valves of tank cars that a general explanatory statement to the gasoline industry seems advisable.

The records of the tank car committee, Section III—Mechanical, American Railway Association, indicate that the tank car and the locomotive tender, of all railroad equipment, seem to be the most liable to derailment. Their records, as well as the records of the Bureau, show that in the case of the tank car, the breakage of the outlet chamber almost invariably follows the derailment and adds greatly to the danger of further damage and loss.

From the time tank cars were first made until the present time the bottom outlets have given more trouble in connection with leakages and fires than any other cause. The tank car was originally designed to be a large shipping container for liquids. No bottom outlet is necessary for such use, but the outlet has been provided and permitted solely for the convenience of the consignee in unloading the tanks. It is contrary to elementary principles of safety to make a hole in the bottom of a tank containing thousands of gallons of a dangerous inflammable liquid, and depend upon any device to keep it closed. On English railroads a bottom valve is not allowed in any "tank waggon" carrying inflammable liquids of the first class. Furthermore, such liquids as gasoline are not transported in "tank waggons" of any type.

The Bureau of Explosives appreciates that the bottom outlet valve cannot be eliminated in a short period of time. We also realize that until an absolutely reliable tank car is obtained some remedies may be instituted to relieve the existing situation. It would approach the ideal if these outlets in the present type of tank car could be provided with valves which would not permit of leakage of contents of the tanks. No type of valve, however, has yet been placed in service which successfully accomplishes this result. As all outlet valves so far have proved inadequate the next best thing to do is to use a solid valve cap as a second defense against leakage at the bottom of the outlet chamber.

The lack of really tight outlet valves is the principal cause of the present difficulties with tank cars. If tank car builders and owners had made a serious effort years ago to correct the situation, really tight outlet valves might have been developed. They have, however, made no such effort until recently. It is hoped that some one of the experimental types now under service tests may prove satisfactory.

When extensions in the way of nipples and stop cocks are added to the outlet chamber the hazards are very greatly increased. Extensions with supplementary valves extending below the bottom of the outlet chamber provide additional joints, each one of which is an additional possibility for leakage. These extensions are also liable to be struck and knocked off or ruptured by flying ballast or obstructions during transit. The only plea made by tank car owners for these extensions is that they mimimize the chance of trouble from a leaky outlet valve when the consignee starts to make connection to unload the car. In supporting this plea no consideration is given to the fact that the extensions increase the hazards while the car is in the hands of the carrier.

We agree that if the use of such extensions were limited to tank cars while standing still, they would furnish a great convenience, but it is the danger and hazard during movement of the tank cars which must be guarded against, and the consideration of which, from a safety standpoint, is far greater than the convenience accruing from the use of such equipment during the unloading process.

The principal losses in the transportation of inflammable liquids occur from shipments of gasoline. What is more startling is that gasoline has enforced its recognition as the most dangerous commodity transported on American railroads. The Bureau of Explosives' records show that from 1910 to the beginning of the present year, gasoline was responsible for 83 per cent of the deaths, 63 per cent of the personal injuries, and over 49 per cent of the property loss and damage occurring in the transportation of all classes of dangerous articles, exclusive of explosives. In the majority of the gasoline losses the bottom outlets started the trouble.

So long as the railroads put up with this situation, paying for the losses of contents and standing the incidental losses from resulting fires, delayed operations, etc., just so long will improvement of the bottom outlet arrangement be delayed.

The action taken at the June 4, 1920 meeting of the tank car committee, American Railway Association, against supplementary extensions, is believed to be a step in the right direction. It amended Section 7 of the Tank Car Specifications by adding sub-paragraph "c" reading as follows:

> No nipples, valves or other attachments, shall project below the bottom outlet cap except while car is being unloaded.

Thus the new ruling permits these extensions to be used only while the tank car is being unloaded.

This decision of the tank car committee was based principally upon the records of results in a large number of cases where this type of equipment was involved. The Bureau of Explosives heartily concurs in the action of the committee.

## IMPROVED CAR SITUATION

The car service division of the American Railway Association authorized the following December 4:

"A decided change for the better in the car situation took place during November, according to reports just tabulated by the car service division of the American Railway Association, showing an increase in the number of cars available in excess of current requisitions, and actual shortage confined to limited sections.

"The seasonal falling off in the number of cars loaded with revenue freight in November, compared with October, has been less than usual. Reports received from class I railroads throughout the United States show that the car supply for grain loading is generally satisfactory except at certain points in the northwest. Practically all roads, however, have a sufficient supply of box cars for ordinary loading.

"The action of the Interstate Commerce Commission in canceling its priority orders on coal cars has made available a large amount of open-top equipment for distribution of commodities other than coal."

Car accumulations the week ending November 26 dropped to 26,324, as against 28,624 in the preceding week, according to reports made to the car service division of the American Railway Association. The accumulations at tidewater ports amounted to 8,270, as against 8,423 the preceding week.

In the week ending November 30, according to compilations made from reports of railroads by the car service division of the American Railway Association, surplus cars totaled 49,695, as against 32,368 the preceding week, while deferred car requisitions, which indicate the extent of car shortage, amounted to 19,673, as against 30,724 in the preceding week.

Of the surplus of 49,695 cars, the majority was made up of box cars, the number being 34,756. Other surpluses by classes were as follows: Auto and furniture cars, 2,195; ventilated box cars, 1,642; flat cars, 881; gondolas, 1,777; all coal cars, 1,786.

Coal cars made up the larger part of the deferred car requisitions, the number being 11,091 cars. The number of deferred requisitions as to other classes of equipment was as follows: Box, 2,795; flat, 2,091; gondolas, 6,029; hopper, 5,062; and refrigerators, 2,121.

# Decisions of Interstate Commerce Commission

## CANCELLATION OF JOINT RATES

In a report on I. and S. No. 1195, Cancellation of Joint Rates in Connection with the Missouri and Kansas Railway (commonly called the Strang Line), written by Commissioner Aitchison (opinion No. 6473, 59 I. C. C. 404-10), the Commission held that the proposed cancellation of joint rates on brick, cement, chats, coal, grain and grain products, hay and straw, lumber and forest products, petroleum products and sewer pipe from points in Kansas, Missouri, Oklahoma and Texas, to Rosedale, Kan., and Westport, Mo., on the Missouri & Kansas Railway, had been justified as to Westport but not as to Rosedale, otherwise known as Forty-first Street, Kansas City. The report also covers I. and S. No. 1207, in which the St. Louis-San Francisco proposed to cancel rates to Rosedale alone.

Coincident with the issuance of the formal report, the Commission further suspended the tariffs cancelling rates to Rosedale, from December 9 to January 8, first suspended in I. and S. 1207.

The Commission decided the case, apparently on the theory that the St. Louis-San Francisco was trying merely to break up the joint rate and through route arrangements with the Strang Line, although that carrier, in its defense of its action, said that it would be satisfied to continue the through rate arrangement if it could have its full locals to Lenexa, Kan., the junction point between itself and the Strang Line. The cancellation tariffs were suspended on the protest of the Court of Industrial Relations of Kansas, the Strang Line, and the Kansas City Chamber of Commerce.

According to Commissioner Aitchison's report, the testimony tended to show that the cost to the St. Louis-San Francisco, of delivering traffic to the Rosedale part of Kansas City on the Strang Line is less than the cost of making the delivery on the rails of the Kansas City terminal maintained by the trunk lines, on which there is reciprocal absorption of switching.

Another ground put forth by the St. Louis-San Francisco is that the Strang Line is not in position to extend the reciprocal benefits which usually attend the establishment of joint rates because the electric line has not freight cars to interchange with the steam roads. It can handle the cars of the steam roads and a number of industries testified that they had located on the Strang Line because it is built on a ridge while the tracks of the steam roads are in the Kansas City bottoms. Delivery on them involves expensive drayage which is avoided when delivery is made on the rails of the electric road. Aitchison said that the reasons put forward by the St. Louis-San Francisco were not determinative of the issues before the Commission.

Westport is not shown as a station on the Strang Line. Therefore Aitchison said commodity rates to that suburb might be cancelled. He said deliveries of Westport traffic, without doubt, would have to be made in Rosedale, because the streets in Westport traversed by the traction line are built up with residences and carload freight could not be delivered there.

## ALLOWANCE FOR SPOTTING

The Commission has dismissed No. 10641, Sharon Steel Hoop Company vs. Pennsylvania Company, Director-General et al., opinion No. 6468, 59 I. C. C. 378-81, on a holding that an increased allowance sought by the complainant for spotting service at Sharon, Pa., had not been justified.

In the opinion, written by Commissioner Woolley, it was observed that a common carrier cannot be compelled to delegate to a shipper the performance of any part of the service of transportation required of it under the law and its tariffs and to make an allowance under section 15 of the interstate commerce act for such performance. It has the right, Mr. Woolley said, if it so elects, to perform the full transportation service itself. A shipper can demand of a carrier full performance of its transportation obligations, he said, but he cannot be heard complaining that an allowance paid to him is insufficient to cover the cost of a terminal service which a carrier is willing to perform, or which, because of conditions at the shipper's plant, it cannot reasonably be required to perform. Nor can a shipper be heard to complain of unjust discriminations or undue prejudice, said Woolley, because of free spotting at his competitors' plants, unless there is a substantial similarity of conditions at the respective plants. Any discrimination or prejudice found to be undue may be removed, the commissioner said, if the carrier so elects, by according the shipper the same treatment as his competitors.

In this case, according to the Woolley report, the complainant asked only an increased allowance. He said the railroads had never performed a spotting service within the complainant's plant. Beginning about October 1, 1904, they made the complainant an allowance for spotting with its engine, of 3 cents per ton, net or gross. In April, 1914, the carriers discontinued the allowance as part of the reform which they thought they were making in compliance with the Commission's decision in the tap line case, later reversed by the Supreme Court of the United States. In May, 1916, after that reversal, they made an allowance of 2.08 cents per ton, and on March 22, 1917, they agreed to pay actual cost of service, but their tariffs, effective June 1, 1917, and still in force, provide for payment at actual cost of service with a maximum of 84 cents per car.

The complaining company thinks the trunk lines should carry out that part of their contract offering to pay the actual cost of the service. The hoop company estimated the cost to be $2.28 per car, figures going to make up that estimate being those for March, 1919.

The defendants claimed that their engines could not do the spotting on account of the extreme curvature of the tracks within the plants.

## RATES TO LOUISIANA POINTS

Because the Commission has disposed of the matters in issue, it has dismissed No. 11247, Consolidated Companies, Inc., et al., vs Atchison, Topeka & Santa Fe, Director-General et al., opinion No. 6450, 59 I. C. C. 283-5. The complaint attacked various class and commodity rates from Ohio, Mississippi and Missouri River crossings and points north and east thereof, to Plaquemine, Donaldsville, New Roads and White Castle, La. The complainants are wholesale grocerymen at Plaquemine and New Roads. They alleged that the class rates charged to the four towns before mentioned were in violation of sections 1 and 3 and the long-and-short-haul part of the fourth section, in that the defendants published lower rates on the same classes to Baton Rouge and New Orleans. Commissioner Ford, in his report on the case, said that the decision in the Memphis-Southwestern case (55 I. C. C. 515) would cover this complaint.

## BAUXITE ORE, RICHLAND TO HAMILTON

In No. 11206, Royal Bank of Canada vs. Seaboard Air Line, Director-General et al., opinion No. 6453, 59 I. C. C. 367-8, the Commission held unreasonable a combination rate on bauxite ore from Richland, Ga., to Hamilton, Ont., to the extent that the factor applied up to Cincinnati exceeded $2.40 a ton. Carriers are to make reparation to the bank as assignee of D. A. Brebner, Ltd., to the basis of $2.40 a ton for that factor. In fourth section order No. 7753, the Commission denied relief to the Seaboard Air Line and its connections on bauxite ore from Savannah to Hamilton, via Cincinnati. Rates must not exceed those from Richland, Ga. Rates are to be lined up not later than March 1. A rate of $3.60 per long ton was charged from Richland to Cincinnati, notwithstanding that there was a proportional rate of $2.40 in effect from Andersonville, Toomsboro and other points in Georgia on the Central of Georgia, more distant than Richland.

### LUMBER, HEBARDVILLE TO BECKLEY

The Commission has dismissed No. 10933, Pine Plume Lumber Company vs. Atlantic Coast Line, Director-General et al., opinion No. 6465, 59 I. C. C. 371-2, holding that the applicable rate on lumber from Hebardville, Ga., to Beckley, W. Va., was not unreasonable. It found that there had been an overcharge, refund on which it has directed.

## KANSAS CITY RAILWAYS CO. RATES

The Commission, in a report on I. and S. No. 1194, Class and Commodity Rates of Kansas City Railways Company, opinion No. 6469, 59 I. C. C. 382-4, took another bite at the freight rate situation in that part of Kansas City known as Westport and Rosedale, served by the Westport Belt Line, part of the Kansas City Railways Company, and the so-called Strang Line, in which two other reports have been made.

In this case Commissioner Aitchison wrote a report that the Kansas City Railways Company had justified the proposed increased class and commodity rates between points on its line, applicable to interstate commerce. The Commission, therefore, has vacated its suspension order and discontinued the proceeding.

After the first report in the so-called Westport case (Badger Lumber Co. vs. A. T. & S. F., 58 I. C. C. 97), the Westport Belt part of the Kansas City Railways Company proposed to increase its switching charge to $15 a car except on hogs in single and double deck cars. On them it proposed to charge $17.40 on 36-foot cars or under, and $19 on cars of greater length, rather than make effective the commodity rates approved in the Commis-

sion's report, unchanged. No change was made in the proposed class rates and they will become effective.

Protestants who caused this suspension alleged that these rates would increase the prejudice against Westport. Mr. Aitchison said that, inasmuch as only one carrier was before the Commission in this case, that allegation could not be disposed of in this proceeding. He said that question could be taken up when the carriers undertook to comply with the Commission's order to remove the prejudice found to exist.

### CHARGES ON SECOND-HAND BOILERS

The Commission has dismissed No. 10975, M. B. Goldstein vs. Director-General, M. K. & T. et al., opinion No. 6466, 59 I. C. C. 373, holding that charges collected on a carload of second-hand boilers from Fort Scott, Kan., to St. Louis were applicable and not unreasonable.

### REPARATION FOR MISROUTING

A finding of misrouting and an award of reparation have been made in No. 11201, Odell-Daly Material Co. vs. Director-General, C. B. & Q. et al., opinion No. 6464, 59 I. C. C. 369-70, the misrouting being on two carloads of chatts from Chitwood, Mo., to Lincoln, Neb.

## RATES ON PACKING HOUSE PRODUCTS

In a report on re-argument on No. 8419, Rath Packing Company vs. Illinois Central, Director-General, et al., opinion No. 6476, 59 I. C. C. 427-29, the Commission has affirmed its original findings and order that the rates on packing house products, in effect prior to June 8, 1919, from Waterloo, Ia., to Minneapolis and St. Paul, were unreasonable to the extent that they exceeded the contemporaneous fifth class rates, and that the carriers should make reparation.

The railroads objected to the disposition of the case, for the reasons set forth by counsel for the Railroad Administration, as follows:

> The main objection that the defendants had to the order of the Commission upon that particular feature was that it was a statement of a general rule which we do not believe to be in consonance with prior decisions of the Commission, and which we do not believe to be correct. That is to say, the rule we object to as stated by this report is first, that a commodity rate higher than a class rate is unreasonable by reason of that fact, and secondly, that the voluntary reduction of a rate—any rate—is proof of the unreasonableness of that rate.

The Commission's affirmation is made on the ground that the inference of counsel that the Commission has laid it down as a general rule that a commodity rate higher than a class rate is unreasonable by reason of the fact is not warranted; also that the Commission has not held that the voluntary reduction of any rate is proof of unreasonableness. The Commission pointed to its decision in Thomas Iron Company vs. Director-General (57 I. C. C. 657) to show that what it has held is that such a fact is not "conclusive evidence" of unreasonableness. It is merely a fact to be taken into consideration in the effort to discover whether the rate on which a voluntary reduction has been made was unreasonable. In disposing of the case, with Commissioner Hall dissenting for the reasons set forth in the original report, the Commission said:

> Our conclusion in the original report was not based wholly upon the two points mentioned by defendants. The report shows that we considered "the relative commodity rates from Waterloo and Mason City." Although the fifth class rates from Waterloo and Mason City to the twin cities were the same, the commodity rate on packing house products from Mason City during the period in controversy was 2.5 cents lower than this fifth class rate, and 4 cents lower than the commodity rate from Waterloo.
>
> We find no sufficient reason for modifying the findings stated in our original report, and they are accordingly affirmed.

## REFRIGERATION CASE AFFIRMED

*The Traffic World Washington Bureau*

The Commission, in a third report, has affirmed its second report on No. 7969, National Poultry, Butter and Egg Association against the B. & O. S. W. In that second report the Commission reversed that part of its first report in which it awarded reparation because it had held that the carriers had not justified the imposition of a separate charge for refrigerating L. C. L. shipments of butter, eggs, poultry and cheese. It held that the total charge, which included the charge for refrigeration, was not unreasonable and, therefore, that reparation was not due. The shipments in question moved between March 20, 1915, and June 1, 1917. Reparation would have run well over a million dollars.

### M. & O. LOAN

The Mobile & Ohio Railroad Company has applied to the Commission for authority to re-pledge as security for a loan of not exceeding $500,000 its St. Louis Division 5 per cent gold bonds due December 1, 1927, in the amount of $500,000, which are now pledged with the Bankers Trust Company as collateral security for a demand loan of $100,000. The loan will be obtained by short term notes and used for working capital, the applicant states.

## CAR SERVICE ORGANIZATION CHANGED

*The Traffic World Washington Bureau*

Inasmuch as the car shortage and congestion are disappearing, the Commission and the American Railway Association are breaking up the organization of joint car service committees created when the Commission began exercising the car service powers conferred by the amended first section of the interstate commerce law. The disintegration, however, is not so complete that re-creation of the organization cannot, in case of necessity, be brought about with comparative ease.

Commissioner Aitchison, as head of the car service work of the Commission, has sent back to their ordinary work several of the inspectors who were withdrawn from that work to serve as members of the committees. He has also dismissed shipper and state commission members of some of the committees with letters of thanks for what they did to get rid of the congestion.

A skeleton organization is to be maintained, however. As a result of conferences between the car service division of the American Railway Association and the Bureau of Service of the Commission, it has been agreed that the local car service committees shall be divided into three classes. Chicago, New York, Cincinnati, Pittsburgh, St. Louis and Toledo are to be in one class. In those cities the railway association will maintain permanent car service organizations.

The second class is to be composed of Atlanta, Buffalo, Detroit, Galveston, Kansas City, New Orleans, Omaha, Peoria, Portland, San Francisco, Seattle, St. Paul and Youngstown. The committees at those places are to be abolished, if the railroads represented on the committees so desire. If the interested railroads desire to abolish the committees, they are expectd to designate one of their representatives with whom the car service division and the Interstate Commerce Commission may continue direct relations. The object in having the railroads concerned in that second class of cities is to be able to have the committees instantly revived, should facts warrant. In New Orleans and Galveston the grain situation is such that the abolition may not take place immediately, even should the roads express a desire to that effect.

The committees of the third class are to be abolished entirely, unless the roads interested manifest a desire to the contrary. The cities in that class are Baltimore, Columbus, Birmingham, Cleveland, Dallas, Denver, Des Moines, Fort Worth, Grand Rapids, Indianapolis, Louisville, Milwaukee, Norfolk, Philadelphia and Washington.

It is not considered probable that the railroads concerned will make any objection to the abolition of the committees. The members of the committees were borrowed from the railroad corporations and, for the time being, their salaries were paid by the association, which also paid all the clerical and other expenses incurred in the special effort to keep cars moving. The men, as a rule, are needed in their usual positions, hence the idea that no railroads will object to abolition.

## COMMISSION APPOINTMENTS

*The Traffic World Washington Bureau*

President Wilson, December 7, sent to the Senate the names of Commissioners Ford and Potter, and James Duncan of Quincy, Mass., his recess appointees to the Interstate Commerce Commission. Commissioners Ford and Potter accepted the recess appointments as commissioners last June and have served since that time, but Mr. Duncan declined to accept the place because of the uncertainty of confirmation.

It is regarded as certain at the Capitol that action on the nominations will be withheld at the present session of Congress. Senator Cummins, chairman of the Senate committee on interstate commerce, to which the nominations will be referred, planned to leave Washington for the south the latter part of this week. He expects to spend several months there in an effort to recuperate from illness which he had during the campaign.

## SHIPPING BOARD APPOINTMENTS

*The Traffic World Washington Bureau*

The names of the seven members of the Shipping Board who took office last week as recess appointees of the President were sent to the Senate December 7 by the chief executive. They will rest there undisturbed during the present short session if the plans of Senator Jones and other members of the Senate commerce committee are carried out for withholding action until March 4 to give President-elect Harding an opportunity to name the board.

### C. & W. I. BONDS

The Chicago & Western Indiana Railroad Company, in a petition filed with the Commission, asks authority to issue its consolidated four per cent mortgage bonds in an amount of $255,000, for the purpose of retiring a like amount of general mortgage bonds.

# Tentative Reports of the Commission

## COMBINATION COAL RATES

Application of the principles laid down by the Commission in the Gosline case, 52 I. C. C. 220; Koenig Coal Co., 57 I. C. C. 241, and Mississippi River & Bonne Terre Ry. Co. vs. Director General, 56 I. C. C. 674, will not be made to shipments of coal from mines in Illinois, Indiana, Kentucky and eastern mines to destinations in Illinois and Wisconsin, which were subjected to double increases, if the Commission adopts the tentative report of Attorney-examiner W. A. Disque on No. 11218, Wilbur Lumber Co. et al. vs. Director General, and related cases, in which the complainants asked for a condemnation of increases in each factor of combinations on coal, based on Peoria or Chicago. Disque thinks the Commission should hold that the rates collected were neither unreasonable nor unjustly discriminatory.

Complaints involving both intrastate and interstate movements were on hearing before Disque and are covered by his report.

The gist of the matter, it is believed, is the fact that the lines carrying coal to the northern suburbs of Chicago and beyond, insist upon their local rates from Chicago and Peoria north and west, while the complainants, for years, in this and other cases, have been trying to procure joint rates, divisions out of which, to the lines beyond Chicago, in many cases, if based even remotely on a mileage pro rate, would be thin.

According to Disque, the rate situation at the time of the shipments, after general order No. 28 became operative, "was rather chaotic." To some of the destinations there were no joint rates via any route; but to others there were joint through rates via some routes and not via others. Even the carriers did not know, in all instances, what rates were actually in effect.

The only question, said Disque, was whether the increases authorized in 1917 in the fifteen per cent case, or by the Public Utilities Commission of Illinois following that case, and those subsequently provided in general order No. 28, in reason, should have been applied to the through rates instead of the separate factors.

Some of the shipments were subjected to only a single increase, while others had to bear double increases. The Director General ordered them all to be increased thirty-five cents but later he said the increase should be only 20 cents. If the rate was less than $1 an increase of only 20 cents was made in some of the rates and if $1 or more, the increase was 30 cents. The resulting situation became, what the complainants called, intolerable.

Disque said the rates involved mainly a question of rate policy, and that mere rate comparisons were of little value in reaching a conclusion. For that reason he did not deem it necessary to set forth in detail all the comparisons offered in evidence.

Complainants, Disque said, were asking for reductions and reparation on rather technical and theoretical grounds, chief of which is that only one increase was intended by the Director-General. He said that where combination is the usual basis for making the rates, it is usually not improper to apply the general increases of rates to the separate factors. Specific reasons, he said, sometimes exist for doing otherwise, as in the Gosline, Koenig and Bonne Terre cases; but no special reason for departing from the general rule appeared in these cases, as did appear in the other cases mentioned, especially in view of the fact that it had not been definitely established by substantial evidence that the rates were or are unreasonable.

### Some Closely Related Cases

In a report on a series of closely related cases, No. 11224, Chicago Coal Merchants' Association vs. Director-General, A. T. & S F. et al., Disque proposes that some limitation be put on the application of the principle that where it is the usual thing to make rates on combination it is not improper to apply general increases to each factor.

Adoption of the report in No. 11224 and the two dozen complaints by individual dealers, will allow the application of the principle to points in the northern part of the Chicago district, as heretofore made, but will place a limit on the increases to the suburbs of Chicago which adjoin the switching district on the north. In a general way Disque recommends a holding that the charging of rates on coal and coke from various producing regions, to the Chicago switching district, higher to some deliveries than to Chicago itself, is not unreasonable or unduly prejudicial, but that it is unduly prejudicial to points just beyond the Chicago district, based on the Chicago combination.

Application of the double increases, without limitation, produces results which Disque thinks the Commission should condemn. At Evanston, for instance, at the Greenwood station, the rate on bituminous coal is on the Chicago basis plus 10 cents. At other delivery points in Evanston, except on Indiana and Illinois coal, based on the combination of locals to and from Chicago, the rate on anthracite coal is 50 cents higher than the Greenwood station rate and on soft coal 65 cents.

Disque could not agree with the carriers in their contention that there are no reasons for relating the rates to Evanston to those to Chicago because Evanston is a residential district, without industries in competition with those at Chicago. Disque suggested that perhaps such situations could be found in every residential suburb near an industrial center, with the difference intensified by the most recent increase, but in no instance that Disque could find was the situation as bad as at Evanston. His opinion is that there are no differences in transportation conditions warranting such differences in rates.

Disque recommends that the unlawful situation be corrected by the making of rates which will not exceed the rates to points on the border of the switching district by more than 20 cents per ton for each five miles or less. Such a basis, he said, will avoid the sharp breaks at Evanston and places situated as it is.

"If the changes here required result in any substantial and unwarranted reductions in revenues—and it does not appear that they will—appropriate means can be found to protect the carriers," says Disque in his report. "The time is fast passing when revenue considerations should be allowed to delay and hinder the making of proper rate readjustments and the adoption of changes in the interest of simplicity, uniformity and greater rigidity. The instant cases typify some of the evils of combination rates. In this connection see Intermediate Rate Association vs. Director-General et al., Docket No. 10826."

## REPARATION ON COAL

A finding of unreasonableness and a violation of the long-and-short-haul part of the fourth section are proposed in a tentative report made by Examiner Myron Witters on No. 11696, Weir Smelting Co. vs. Director-General, as agent, et al., and parts of fourth section applications Nos. 4218 and 4220 of the Missouri Pacific, as to a rate of 90 cents on slack coal from Deering, Kan., to Caney, Kan. Witters thinks the rate should be held unreasonable to the extent that it exceeded 75 cents, the rate to a more distant point, and that reparation should be made to that basis.

The movement of coal from Deering to Caney was caused by the removal of a zinc smelting plant from Deering. The coal, 172 carloads, was moved in September, 1918. The question as to which rate to apply was made perplexing by the various controversies arising out of the fifteen per cent case and General Order No. 28. The examiner said it was not worth while to consider whether the rate was in conflict with No. 28, because the test provided by the interstate commerce law would be sufficient to dispose of the issue.

## RATES ON ICE

Rates on ice, in carloads, from Fleishmann's, N. Y., to Grand Gorge and Hobart, N. Y., in the opinion of Examiner John A. McQuillan, expressed in a tentative report on No. 11625, Sheffield Farms Co. vs. Director-General et al., as agent, were unreasonable and reparation should be awarded. The report also covers a sub-number, Same vs. Same. The traffic moved in March, 1919. Specifically, the examiner recommended a finding of unreasonableness in the main case as to a 12-cent rate to Grand Gorge because and to the extent that it exceeded 6 cents, and a rate of 12.5 cents to Hobart because and to the extent that it exceeded 6.5 cents. Reparation amounting to $1,680 was recommended in each case.

## LUMBER COMPANY NOT A CARRIER

An unusual if not wholly new application of the principles in the tap line and industrial railway cases is proposed in a tentative report by Examiner Gartner on No. 11327, Craig Mountain Railway Co. et al. vs. Great Northern et al. By implication, Gartner proposes that the Commission hold that the Craig Lumber Company, one of the complainants in this case and the sole owner of the railroad company, cannot at the same time be a lumber company and a common carrier, because the railroad is not separately incorporated. Therefore, he recommends the dismissal of the complaint, which is an application for joint through rates on lumber and forest products between the Craig Mountain Railway Company and the trunk lines with which it connects at Craig Junction, Idaho. The proprietary lumber company is the only shipper on the rails of the Craig railroad. In

times past there have been other shippers on its rails, but none during the last two years.

"If the railroad were incorporated into a separate company, authorized by its charter to be conducted as a common carrier, a wholly different case would be presented," said Gartner.

"The complainant, as a lumber company shipping lumber, is undoubtedly entitled to complain seeking the establishment of lower rates, but its status as a shipper of its own lumber attaches when its product is delivered to a common carrier, and this does not happen until it turns its lumber over to the trunk lines at the junction," Gartner further observes. "The rate applying from the junction is the Spokane group rate, which is in no wise questioned as unreasonable per se. The cost to complainant of getting its product to the rails of the common carrier is a part of its production cost no matter whether it employs wagons, automobile trucks or a railroad. Since the lumber company, as a shipper, enjoys the same rate as that enjoyed by all shippers of lumber situated in the Spokane lumber group, there can be no unlawful discrimination against it."

It developed at the hearing that the railroad company is not what Gartner called an entity, other than that it exists as a part of the operations of the Craig Mountain Lumber Company. The trunk lines thereupon moved to strike it from the list of complainants. Attorneys for the lumber company resisted that on the ground that the name "Craig Mountain Railway Company" is a trade name under which the lumber company operates its railroad, and the name under which it files tariffs with the Commission holding out its offer to transport freight for hire for the public. Gartner said there was no such allegation about a trade name in the complaint and no proof in the record to support the allegation of counsel.

Gartner said that the tariffs of the railroad company were filed with the Commission under the so-called trade name and until 1914 the annual and other reports of the railroad company were submitted under that name. In that year the statistical bureau of the Commission required the reports to be filed in the name of Craig Mountain Lumber Company's railroad.

"The Craig Mountain Railway Company is not a legal entity such that it can complain to the Commission seeking the enforcement in its favor of the provisions of the interstate commerce act," says the Gartner report on that point. "Hereinafter no further notice will be taken of the Craig Mountain Railroad Company. The railroad of the Craig Mountain Lumber Company will be referred to as the railroad to distinguish it from the lumber company.

"If the lumber company were chartered as a common carrier, and although it held itself out as a common carrier of lumber and forest products, and even if it were held that the lumber company, as to other freight, is a common carrier, can it be a common carrier of its own lumber? Manifestly not, because its own lumber necessarily would come under the designation of company material. A carrier may be a shipper of its own material as to the movement over the lines of other common carriers, but not with respect to the movement over its own line. The same entity can never in law be two separate entities with respect to a particular transaction in which two entities must be present. Before the status of common carrier can exist, there must be two entities, the carrier and the shipper. If the two, carrier and shipper, become merged into the same entity, necessarily the status of common carrier cannot exist. The Commission, in Tuckerton R. R. Co. vs. P. R. R. Co., 52 I. C. C. 319, has indicated that the movement of company material over the line of the owning railroad is not a common carriage.

"Since only joint through rates on lumber and forest products are asked from Winchester, and since it appears that all of the lumber and the lumber products that have moved out over the railroad during the last two years to interstate destinations has been lumber of the lumber company, with respect to which movement it cannot be a common carrier, it follows that as to the subject matter of the complaint, viz., Joint Rates on Lumber and Forest Products, the complainant is not a common carrier and, not being a common carrier, the Commission is without jurisdiction to establish joint rates in connection with it."

## CEMENT FROM HUDSON TO N. ENGLAND

A recommendation that the complaint be dismissed has been made by Attorney-examiner Arthur R. Mackley, in a tentative report on No. 11110, Atlas Portland Cement Company vs. Central Vermont et al., on a holding that the rates on cement from Hudson, N. Y., to New England destinations are not unreasonable, or subject Hudson to undue prejudice and disadvantage, or give to the Lehigh district in Pennsylvania and New Jersey an undue preference and advantage.

Adoption of the examiner's report will put an end, for the time being, at least, to one of the hardest fought cases that has been before the Commission for a long time.

The complainant, which has the largest cement mills in both districts, proceeded on the assumption that the rates on cement from the Lehigh district are either too low or that the rates from the Hudson district are too high; also that the rates on cement from the Lehigh district are too low or the rates on anthracite coal and other commodities the transportation characteristics of which are not unlike those of cement, are too high. It brought out the fact that the rates on cement from Lehigh are lower than the rates on anthracite coal and that from Hudson the fact is the reverse, using coal reaching the Hudson gateways for purposes of comparison.

Mackley was not much impressed with the comparisons, saying that they do not show whether the rates on coal and other commodities of transportation with characteristics similar to cement are too high or the rates on cement too low and that in the end the comparison, to be helpful, would have to come back to a comparison of rates on cement from the competing districts.

The Hudson mills, Mackley pointed out, have a rate advantage over the Lehigh mills, ranging from ten cents to $2 a ton, but the differences in rates, the complainant contended, were not great enough to give the Hudson mills the advantage of their nearer location to the centers of consumption in New England, which use about 6,000,000 barrels a year. In 1919, according to a check made by the railroads, 73 per cent of that supply came from the Lehigh district. Mackley said the lower cost of production in the Lehigh district contributed materially to the ability of the Lehigh mills to obtain New England orders, notwithstanding the differences in rates.

Comparison of geographical and weighted mileages were next to impossible, Mackley said, because the parties were not able to agree as to what should be counted in making up the mileages. Cement from the Lehigh district moves through the water gateways to New England and the carriers, if so disposed, might use constructive mileages for the bridge and barge parts of the routes, but they did not count it. Mackley said that the carriers might waive the constructive mileage, in their discretion, so long as they act within reasonable limitations even if the spread between the districts is affected by their so doing.

The feasibility of making the rates from the rival districts a stated percentage of the class rates was discussed, Mackley said, and eighty per cent of sixth, under certain conditions, would be satisfactory to the complainant. Mackley said, however, that the general basis suggested did not seem to be practicable because the class rates used are not the same, from both districts. A further complication, he said, was presented by the fact that the cement mills in the Lehigh district are not all in the same class rate origin group, which fact would produce different rates from different mills. His idea is that that basis would result in confusion and discrimination from and between the two districts, which would result in further complaints.

The carriers suggested that with the adoption of a ten-class scale, which they have in course of preparation for application throughout Official Classification territory, the difficulties suggested by the examiner would be removed, and that then the cement rates from both districts may be adjusted with reference to the class rates.

"A workable relationship with class rates," Mackley said, "from both districts would seem to present the most promising solution, permanently, of these rates."

## INTERIOR IOWA CITIES CASE

Assistant Chief Examiner Ulysses Butler, in a tentative report on No. 11296, William Alter et al. vs. Chicago Great Western et al., recommends a holding that the carriers complied with the Commission's order of December 3, 1918, in the interior Iowa cities case (46 I. C. C. 39), in establishing proportional rates from the west bank of the Mississippi River to Mason City on traffic from points east of the Indiana-Illinois line when they applied rates for distances ranging from 201 to 220 miles. The contention of the complainants was that the mileage from Dubuque to Mason City (171 miles) should be applied, on the theory that inasmuch as the Milwaukee crosses the river at Dubuque that distance should govern. Butler pointed out that, when the Commission got through amending, modifying and otherwise handling its orders in that case, the short line "routes" were made the measure of the proportional rates to be applied. The route is actually through Sabula, which is 44 miles farther from Mason City than Dubuque. Butler also recommended a holding that the carriers had complied with each order as issued. The complainants asked for reparation.

## JOINT RATES WITH TRACTION LINE

Trunk lines connecting with the rails of the suburban lines of the Portland Railway, Light & Power Company and its subsidiary, the Willamette Valley Southern, must enter into through route and joint rate arrangements with the traction system, at least so far as rates on lumber and forest products are concerned, if the Commission adopts the tentative report of Examiner E. L. Gaddess on No. 11004, Cameron-Hogg Lumber Co. et al. vs. Director-General, Portland Railway, Light & Power Co. et al. Gaddess recommends a holding that refusal of the trunk lines to make such through route and joint rate arrangements on

the coast group basis, while maintaining such basis from points on their own branch lines or on the rails of their independent connections, constitutes undue prejudice against the shippers from points on the traction line.

The trunk lines resisted the application of the lumber shippers in this case on the ground that there are something like 200 tap and logging railroads in Washington and Oregon which will demand like arrangements. Gaddess said that that was no reason for continuing an arrangement that operates to the prejudice of the shippers whose mills are on the rails of the traction system.

Gaddess said no damage had been shown and therefore that reparation should be denied.

## DISMISSAL OF BIRMINGHAM CASE

Assistant Chief Examiner Ulysses Butler has recommended the dismissal of No. 10011, Birmingham Traffic Bureau vs. St. Louis-San Francisco, Director-General et al., largely because the pending adjustment of rates to Nashville and other points in Tennessee under the Commission's decision in Murfreesboro Board of Trade vs. L. & N. and the Memphis-Southwestern investigation cases probably will go far to remove the undue prejudice alleged by Birmingham to exist between the relation of rates to Birmingham, on the one hand, and to Nashville and Chattanooga, on the other. Butler thinks no finding should be made on this record. If that adjustment does not yield satisfactory results, Butler suggested appropriate further action might be taken.

The complaint averred that the class and commodity rates from Memphis to Birmingham were unreasonable and unduly prejudicial as compared with rates from Memphis to Nashville and Chattanooga, Tenn., and Atlanta, Ga.

Butler recommended a finding that the rates under attack were not unreasonable; also that they were not unduly prejudicial to Birmingham or unduly preferential of Atalnta.

In his report on the case Butler went back as far as the Cooley adjustment in 1886, reviewing in his travel toward the present time, the effect of the entry of the St. Louis-San Francisco into the southeast. Under the Cooley adjustment the rates to the southeast from points north of the Ohio were made with the Louisville rate as the zero point. Cincinnati was made arbitrary over Louisville, beginning with ten cents first class and scaled down. Memphis was made four cents under Cairo and Louisville, without scaling, on all classes. The entry of the Frisco into the southeast put the adjustment into jeopardy, but the rate structure righted itself and, with the exception of occasional attacks of a general nature, it has stood without serious changes, except those forced by the entry of the Frisco into Birmingham. The Memphis-Southwestern investigation and the complaint of the Murfreesboro Chamber of Commerce have made revision necessary and, pending the completion of that revision, it is Butler's idea that nothing should be done.

## CHARGE FOR REFRIGERATION

Examiner Henry C. Keene, in a tentative report on No. 11340, Bridgeman-Russell Company et al. vs. Great Lakes Transit Corporation et al., recommends a holding that the aggregate charges on butter, eggs, other dairy products, and dressed poultry, moving lake-and-rail from Duluth to eastern destinations, comprising the joint third class rates, and the separately established charge of 8 cents per 100 pounds for refrigeration during the lake movement from Duluth to Buffalo, had not been shown to be just and reasonable. The complaint was that the third class rate applicable on the traffic would be adequate compensation for both transportation and refrigeration. Prior to March 10, 1920, the transit corporation provided refrigeration service without imposing any charge other than the established transportation rates. On that date the establishment of a separately published refrigeration charge created an increase in the transportation rates, Keene says, which, under section 15 of the interstate commerce law, placed on the defendants the duty of showing that the aggregate charge was just and reasonable.

Keene recommends the issuance of an order requiring cancellation of the charges separately established as of March 10, 1920, to cover refrigeration on steamships of the Great Lakes Transit Corporation, Duluth to Buffalo, on shipments moving on the joint third class rates, and as to such shipments, effecting the restoration of the rates in force prior to the establishment of the refrigeration charge.

The complaint in this case was filed and hearing was had prior to the beginning of navigation for the season of 1920. At the date of the hearing no shipments had been made under the refrigeration charge; therefore, no finding could be made as to reparation. The case is recommended for disposition without prejudice to the right of the complainant to make a showing regarding shipments in the season of 1920.

The complainants submitted cost studies to show that 8 cents per 100 pounds for refrigeration would be exceedingly high even if it were admitted that the Great Lakes Transit Corporation had spent as much money as claimed in fitting ships with refrigerating apparatus.

## HOGS TO NORTH FT. WORTH

In a tentative report on No. 11522, Swift & Co. vs. Director-General, Rock Island et al., Attorney-Examiner Charles F. Gerry recommended a holding that rates on hogs in single and double decked cars from South St. Paul, Sioux City and South Omaha to North Fort Worth, shipped after June 25, 1918, were unreasonable and that reparation should be made down to the basis of rates prescribed in what all packers know as the 1716 scale, 22 I. C. C. 160, increased in accordance with General Order No. 28. The unreasonableness was in the factor from Kansas City to North Fort Worth, amounting to 1 cent per 100 pounds.

### Hogs to Oklahoma City

Gerry recommended a similar finding and order in No. 11589, Morris & Co. vs. Director-General, A. T. & S. F. et al., as to shipments of hogs from the two Kansas Citys and St. Joseph to Oklahoma City, made between July 30 and December 19, 1918.

## MINIMA ON GRAIN AND PRODUCTS

*The Traffic World Washington Bureau*

A practically complete code covering minima on grain and grain products and rules relating thereto will be filed by the carriers on or before December 21, to become effective January 1, under special permission No. 51215, issued by the Commission December 4, and dated the day before.

That permission was put out so as to provide tariff supplements to take the place of supplements which expire by limitation December 31. The permission authorizes the carriers to cancel the minima and rules which would become operative January 1 by reason of the expiration of supplements filed under special permission No. 50450, of August 21. The supplements and tariffs filed under the permission of August 21 were put in to meet an emergency by increasing the minima, thereby having the effect of increasing the car supply.

The code is the result of the conference held by Traffic Director W. V. Hardie at St. Louis on November 15 with representatives of the grain trade, carriers, and representatives of the commissioners of nine heavy grain shipping states. It provides minima that will be higher, in some instances, than would have become operative on January 1 but lower than the minima in effect now.

But for the promulgation of this code, the confusion in grain and grain products minima that was characteristic prior to federal control and prior to August 21 would have returned. It was with a view to preventing such an unsatisfactory situation returning that Director Hardie was ordered to hold the hearing at St. Louis.

While there is nothing official to indicate it, it is a fact that the state commissioners' representatives took such part in the conference that the code may be regarded as representing their views. So far, therefore, as state commissions can be bound, it is a federal and state code.

The fact that the Commission's representative participated in the conference, however, does not put the supplements beyond protest with a view to suspension or make them immune from attack on the ground that they violate some provision of the law. All possible situations may not have been imagined in the conference at St. Louis, so there may be hardships arising from the application of the supplements that would warrant an inquiry by the Commission.

The chief changes wrought by the new code are the reduction of the minimum on products from 48,000 to 40,000 pounds, which minimum is also applicable to oats, ear corn, snapped corn and corn in the shuck in instances where the marked capacity of the car is 50,000 pounds, and establishing 50,000 pounds instead of 60,000 as the ordinary minimum on grain, except oats and the kinds of corn mentioned. The permission, which shows the details, and modifying notes and exceptions, is as follows:

It appearing that, on August 21, 1920, the Commission issued Special Permission No. 50450 authorizing carriers generally throughout the United States to file with the Interstate Commerce Commission special supplements establishing certain increased carload minimum weights on grain and grain products, and rules and regulations applicable thereto, which minimum weights and rules were generally published and made effective in tariffs containing provisions for expiration upon December 31, 1920, and the establishment upon January 1, 1921, of the minimum weights and regulations in effect immediately prior to November 3, 1919, and,

It further appearing that information in the possession of the Commisson indicates that the emergency which justified the establishment of said increased minimum weights no longer exists to the same extent, and.

It further appearing that prior to November 3, 1919, the minimum weights and rules applicable in connection therewith were in many cases not uniform, creating in some instances discrimination between localities or individuals, and that it is desirable that minimum weights on grain and grain products and rules applicable thereto throughout the country approach uniformity in so far as possible.

It is ordered that all carriers and their lawfully appointed agents are hereby authorized to publish and file on 10 days' notice to the Commission and the general public special supplements to their tar-

iffs cancelling the minimum weights, rules and regulations applicable thereto now published to become effective January 1, 1921, upon the expiration of the minimum weights, rules and regulations applicable thereto authorized in Special Permission No. 50450 as amended and establishing minimum weights on grain and grain products and rules and regulations applicable thereto, as follows:

On grain, all kinds (except oats and ear corn, snapped corn or corn in the shuck), minimum weight marked capacity of car, except where marked capacity is less than 50,000 pounds, in which case minimum weight will be 50,000 pounds per car (subject to notes 1, 2, 3 and 4 below).

On oats and ear corn, snapped corn or corn in the shuck, straight or mixed carloads, minimum weight 80 per cent of marked capacity of car, except where marked capacity is less than 50,000 pounds, in which case minimum weight will be 40,000 pounds per car (subject to notes 1, 2, 3 and 4 below).

Note 1: Oats and ear corn, snapped corn or corn in the shuck, in mixed carloads with other grain, will be subject to minimum weights applicable to "grain, all kinds (except oats and ear corn, snapped corn or corn in the shuck)."

Note 2: Actual weight will apply in the following cases:

(a) When grain is loaded at point of origin to within 24 inches of roof, at side walls of car, for the purpose of federal, state or official grain exchange inspection.

(b) When grain is loaded to proper grain line of cars so marked.

(c) When car is loaded to full space capacity.

When any of the provisions of this note are applicable, notation to that effect should be inserted in the bill of lading by shipper or agent of the carrier, but failure to make such notation shall not prevent the application of the terms of this note upon presentation of suitable proof. Such notations should be specific, indicating on which of the three grounds herein specified, actual weights should be protected.

Note 3: When grain in transit is, for causes beyond the control of shipper or owner, transferred from one car to another of greater capacity (either direct or through elevators), the minimum weight applicable to the car from which transfer is made shall apply to the car into which the shipment is transferred.

Note 4: When carrier cannot furnish car of capacity ordered by shipper and for its own convenience furnishes a car of greater capacity than the one ordered, such car may be used on the basis of the minimum weight applicable to the car ordered by shipper, but in no case less than actual weight; the capacity of car ordered, number and date of the order to be shown in each instance upon the bill of lading and carrier's waybill.

When actual weight is more than 10 per cent in excess of the marked capacity of the car ordered by shipper, the minimum weight shall be that applicable to the car in general service the capacity of which is next greater than the capacity of car ordered. When shipper orders a car of marked capacity less than 60,000 pounds and carrier furnishes a car of greater capacity, the minimum weight shall be 60,000 pounds, but not greater than the marked capacity of car furnished.

On grain products, namely:

Barley, cracked, flaked, pearl, roasted, rolled, sprouts, dry. Bran. Brewers' cerealine, brewers' cornflakes, brewers' flake, brewers' grits, brewers' meal. Cerealine, other than brewers'. Chops, grain (chopped feed). Cracked corn, cornflake, corn germs, corn germ meal, corn meal.

Farina. Farinose. Feed, chopped. Feed, gluten, hominy, nutrilene. Feeds, live stock or poultry, consisting in part of grain or grain products, when taking grain, grain product or grain by-product commodity rates. Flour, buckwheat, barley, corn, feterita, kaffir corn, milo maize, mixed grains, oat, pancake, potato, prepared rye, spelt, wheat. Food preparations, cereal, not otherwise specifically provided for herein when subject to grain or grain product (flour, meal, etc.), commodity rates.

Grain products, not otherwise specifically provided herein, when subject to grain, grain product or grain by-product (flour, meal, etc.), commodity rates. Grits. Groats.

Hominy, hominy flake, hominy pearl.

Maizea. Malt, malt sprouts. Middlings. Mill feed. Millstuffs.

Oat feed, oat flake, oatmeal. Oats, cracked, rolled.

Rye, cracked, crushed, rolled.

Shipstuff. Shorts.

Wheat, cracked, crushed, flaked, granulated, rolled, in straight or mixed carloads, or in mixed carloads with other articles when tariffs provide that the grain, grain product or grain by-product (flour, meal, etc.), commodity rates apply on such mixtures.

Minimum weight 40,000 pounds per car (see notes 1, 2, 3, 4 and 5).

Note 1: When the car is loaded to full space capacity, actual weight will apply.

Note 2: Actual weight will apply upon molasses feeds or other stock feeds having liquid sweetening ingredients (not medicated or condimental) when cars are loaded at point of origin to within 24 inches of the roof at the side walls.

Note 3: On grain and grain products handled under transit arrangements the minimum weight from transit point will be the same as the minimum weight into the transit point, except, when a car of less capacity is furnished at transit point, in which case the minimum weight as applicable to such car of less capacity, will apply; or where the shipment from transit point consists of grain products, the minimum weight on such grain products from transit point will be the same as provided on grain products into the transit point.

Note 4: On mixed carloads of grain and grain products the minimum weight as applicable to shipments of grain products in mixed carloads will apply, provided the weight of the grain which may be included in such shipment shall not exceed 33 1-3 per cent of the total weight loaded in such mixed carloads. If the weight of the grain which may be included shall exceed 33 1-3 per cent of the total weight loaded in such mixed carloads, the minimum weight as applicable to such grain will apply, except when car is loaded to full space capacity the actual weight will apply.

Note 5: When minimum weights were on November 3, 1919, greater than 40,000 pounds, such minima may be substituted for the minimum of 40,000 pounds named herein.

And they are hereby permitted in the filing of such supplements to depart from the requirements of rule 9 (e) of Tariff Circular 18A as to the number of supplements or the volume of supplemental matter to which the tariff is entitled, including tariffs of less than 5 pages, such supplements to contain no other matter; and to depart from the terms of rule 8 (f) of said tariff circular, which provides that the cancellation of an item or items must be made under the same item numbers (with suffix attached) as borne by the cancelled items;

And provided, that in the next regular supplement to or reissue of such tariffs, the special supplement herein authorized shall be cancelled and the minimum weights, rules and regulations therein contained to be published in accordance with the requirements of the Commission's tariff rules.

And provided, that the minimum weights, rules and regulations authorzied above shall not apply to narrow gauge railroads or railways.

And provided further, that each and every supplement shall carry on its title page the notation:

"Departure from the requirements of rule 9 (e) of Tariff Circular 18A is authorized under Special Permission of the Interstate Commerce Commission No. 51215 of December 3, 1920."

This authority, which is limited strictly to its terms, does not waive any of the requirements of the Commission's published rules relative to the construction and filing of tariff publications, or any of the provisions of the Act to Regulate Commerce, as amended, except as hereinabove provided. It is void unless the supplements issued thereunder are filed with the Commission on or before January 31, 1921. Such supplements must bear the notation "Issued on 10 days' notice, under Special Permission of the Interstate Commerce Commission No. 51215 of December 3, 1920."

The Commission has sent a circular letter to all state and public utility commissions expressing the hope that they will make effective on intrastate traffic the minimum weights on grain and grain products authorized by it in Special Permission No. 51215.

In the letter to the state commissions, the federal body told about a conference between Traffic Director Hardie and representatives of nine state commissions, held at St. Louis immediately after the conference between railroads, shippers and regulating officials, on November 15. At that time, the Commission said, an understanding was reached that the nine representatives would recommend to their respective commissions the adoption of the minimum weights, and rules relating to such weights. The letter is as follows:

"In accordance with an announcement issued November 3, at the suggestion of several state commissions, a conference was held at St. Louis on November 15 to consider minimum weights on grain and grain products. An invitation to attend said conference was sent to all state commissions.

"The minima on interstate traffic are, generally speaking, at present marked capacity of car on grain and 48,000 pounds on grain products, which minima also apply on state traffic in a number of states. Tariffs containing said minima expire December 31, 1920, and on January 1, 1921, unless other steps are taken, the minima in effect in 1919 will be restored, which minima were far from uniform.

"Following the general conference of shippers and carriers, an executive conference of all the representatives of state commissions present (nine in number), with the representatives of this Commission, was held, following the principles of section 13 of the interstate commerce act. At that time an understanding was reached that all such representatives would recommend to their respective commissions a reduction in the minimum on grain products from 48,000 pounds to 40,000 pounds and upon grain a continuance of the marked capacity minimum, modified by reduction upon oats and ear corn to 80 per cent of marked capacity, by the adoption of a rule requiring protection of the minimum applicable to the size of car ordered, when the carrier furnishes a larger car than ordered by the shipper (subject to reasonable restrictions against ordering cars smaller than geneally in use) and certain other modifications of the rules designed to meet most of the objections presented by shippers to a continuance of the marked capacity basis.

"This Commission has now approved substantially the basis agreed upon at the St. Louis conference and has issued Special Permission No. 51215, authorizing all carriers to establish said basis effective January 1, 1921, upon not less than 10 days' notice in lieu of the varying minima and rules which otherwise would become effective on that date. A copy of said order is submitted herewith for the information of your commission.

"It is hoped that this order is such that its provisions may be made effective upon state and interstate traffic alike. As above stated, it is designed to conform to the combined views of the representatives of nine state commissions and of this Commission, with the very purpose of devising a basis which may be uniformly applied and avoid the inequalities and discriminations which almost inevitably follow the maintenance of varying bases.

"It will be appreciated if the various state commissions will arrange to furnish this Commission with a copy of such order or orders as may be issued on this subject."

## FABRICATION AT PARKERSBURG

V. E. Milsark, traffic manager of the Parkersburg Rig & Reel Company, Parkersburg, W. Va., and his attorney, Walter E. MacCornack, have just filed a brief in Docket 11733, the Parkersburg Rig & Reel Co. vs. the Baltimore & Ohio Railroad Co. et al., a case involving fabrication in transit at Parkersburg on certain iron and steel articles. The brief alleges that its competitors have fabrication privilege at the through rate, and that complainant is obliged to pay the local rates in and out of Parkersburg, the sum of which exceed the through rate from 20 to 26 cents per 100 lbs. on an average. The brief asks that the Commission find such rates unreasonable and unjustly discriminatory and prejudicial. Reparation by permitting the complainant to apply the iron and steel it has bought against the outbound fabricated material, thereby protecting the through rate from point of origin to final destination, is asked. The defendants contend that Parkersburg is out of the direct line for transit privilege, but the brief says that Parkersburg is in a natural and reasonable line and that the rates apply through Parkersburg.

# WATERWAYS AS AUXILIARIES

*The Traffic World Washington Bureau*

Use by the railroads of the waterways as auxiliaries in handling the nation's transportation business, ownership of boat lines by railroads, and co-ordination of rail-and-water transportation under the supervision of the Interstate Commerce Commission was advocated by C. H. Markham, president of the Illinois Central, before the National Rivers and Harbors Congress, December 8.

"I think it will be agreed that the question of the development of inland waterways should be considered as a part of the entire transportation problem of the United States," said he.

"We need better and more adequate transportation to carry the products of our farms, forests and mines to the places in our own country where they are to be consumed or to be used as the fuel and raw materials of manufacture. We need better and more adequate transportation for distributing the products of our manufacturing industries from the great centers of population and industry to all parts of the country. Our people within recent years have enjoyed a great export trade. Their prosperity requires that a large part of all of this be retained; and the efficiency and adequacy of our inland transportation and our merchant marine will largely determine the amount of export business we will do.

"If our industries are to grow, and to compete successfully with those of other nations, we must get our raw materials and manufactured products to tidewater for delivery to an American merchant marine at a cost which will enable prices to be made for our commodities which will compare favorably with the prices charged by other nations. To do this we must make use of those instrumentalities of transportation which are in fact the most efficient and economical.

"We have available three means of inland transportation—highway, railroad and waterway. Good roads and the motor truck have begun to play an important part in transportation. For some years the railways have found it difficult, and at times impossible, to handle all the freight offered. Trucks have helped to relieve the situation by handling substantial amounts of freight in congested areas. In many cases they have hauled freight, and especially high grade freight, considerable distances.

"The public's welfare demands that transportation shall be rendered in any particular territory, or between any particular points, by that means which can render it most economically, due allowance being made for differences in the speed, regularity and other features of the service. There are many parts of the country in which water transportation cannot be provided. Take, for example, the supplying of coal to the Northwest. The advantages of water transportation on the Great Lakes for bulky commodities moving in large volume are so great that the natural source of the Northwest's coal supply is the mines in the Pittsburgh district, in Ohio and in West Virginia, and the natural route for it is by rail from the mines to Lake Erie ports, and by boat to the head of the lakes. Only a small part of the coal going to the Northwest moves entirely by rail.

"There are, however, many parts of the country in which it is still debatable whether, if the waterways were developed, transportation by rail or by water would have the advantage in cheapness and efficiency. I do not wish to say anything against the governmental waterway policy which has been followed in the past. There is, however, one point regarding it on which I think all will agree. This is that it has not been carried out in such a way as definitely to determine where transportation by water, and where transportation by rail, are preferable. If the nation is to continue to spend many millions of dollars upon waterway development, the greatest immediate need seems to be the formulation of a definite and constructive policy under which waterway expenditures will be concentrated where physical and commercial conditions are favorable to the development of a large water borne traffic.

"The development of waterways often has been advocated to regulate railway rates. Doubtless in many cases railway officers have assumed an attitude of antagonism to it because they feared the effects it would have on their earnings. Railway officers are able now to take a more detached view of this subject than in the past. One of the products of the war is a new point of view toward the railroad problem as expressed in the transportation act under which the roads were returned to private operation.

"The transportation act directs the Interstate Commerce Commission to so fix the rates as to enable the railroads of each group, if efficiently and economically managed, to earn a return of 5½ to 6 per cent on their aggregate valuation. It follows that if waterways should be so developed in some parts of the country as to take freight business from certain lines of the railways, the Interstate Commerce Commission would have to make the rates high enough on the business left to yield the returns specified in the law. While, therefore, the development of waterways in certain parts of the country might make the cost of transportation lower to shippers located on the waterways, it might, because of the diversion of business from the railroads, actually make the rates of shippers located exclusively on the railways higher than they otherwise would be. However, as I have said, the government should consider the policy adopted in relation to its effects on the public as a whole, and not in relation to its effects on only part of the public.

"You may say that water competition would force the railways to reduce their rates, at least between points where the competition existed. I think there is a good deal of misunderstanding regarding competition between railways and waterways. My observation is that there never has been for any considerable time actual competition between them. When freight may move between certain points by either rail or water it always is but a short time until either the rail route gets it all or the water route gets it all.

"Because of the fact that the water route is better and more economical, the railways not only do not compete, but do not provide facilities for competing. In consequence, if conditions arise which interfere with the movement of sufficient coal by water, it is practically impossible to get the coal to the Northwest. Somewhat the same situation existed before the war with respect to the movement of coal from the West Virginia mines to New England. The coastwise route from Norfolk and Newport News always had been better and cheaper than the rail route, and practically all the coal moved by rail to tidewater, and thence by water to New England. In the midst of the war many of the coastwise steamships were transferred to transoceanic service, and it was found almost impossible to get enough coal to New England by rail.

"Take, again, the conditions that have existed between Savannah, Ga., and New York and Boston. Until the carriers by water were commandeered for war purposes the people of Savannah knew nothing about shipping by rail, either from New York and Boston to Savannah, or vice versa, any commodity that could be handled by water. You might occasionally find a large piece of machinery that could not be gotten into the hold of a vessel and that had to be handled by rail on two freight cars.

"Climatic conditions have been among the chief reasons why the railways have taken from many waterways practically all their business. A railway can operate throughout the winter in our northern states, while the waterways are closed to navigation. The Mississippi River north of Cairo, and for some distance south, often freezes over and becomes unnavigable for two months or more. The season when navigation is closed on many other inland waterways is longer. In order that a railroad may be in a position to give the public at all times the service it needs, the railroad ought to be equipped to permit it to take care of the peak load of its traffic just as should any other public utility such as an electric light or a water plant.

"As I have said, the transportation problem should be approached from the standpoint of the welfare of the entire public. All the people must bear in the first instance the cost of waterway development carried on by the national government. The total cost of handling traffic on canals and canalized rivers includes interest on the money invested in constructing them and the cost of maintaining them, as well as the cost of providing the boat service. Should not the users of water service be required to contribute in the form of tolls toward a return on the investment and toward the maintenance of the facilities? It seems only fair to all of the people of the country that if government money is to be used to provide facilities for the movement of traffic by water, the users of the water service should contribute toward the cost of constructing and maintaining the waterways, just as those who use transportation by rail are required to contribute toward the cost of the construction and maintenance of the railways.

"Since there never is for any considerable time actual competition between water and rail carriers—as one or the other, when they are pitted against each other, always will take practically all of the business—there is evident need for comprehensive study to determine where transportation by water and where transportation by rail will be preferable. It is as questionable a policy to make expenditures on waterways where the conditions are such that they probably will never be able to take the business from the railways, as to provide a large surplus capacity on the railroads to be used only in emergencies when the waterways are closed.

"When we find, after proper experiments have been made, that transportation by water in any part of the country is in fact more efficient and economical than by rail, the railways should not be forbidden, but encouraged, to use the waterways as auxiliaries. The railroads are already organized and engaged in the business of transportation. They have agencies and connections with other railroads throughout the country, as well as connections with steamship lines throughout the world. They therefore have facilities for gathering traffic from every direction to turn over to water carriers. It may be said that if the railways are allowed to operate boats they will drive off boat lines owned by independent companies, but the Interstate Commerce Commission has power to prevent this.

"The officers of the railroads and the water lines, in co-operation with the Interstate Commerce Commission, should be able to determine whether it would be more economical and beneficial to the country for certain traffic to be handled by rail or by

water. The argument often is made in favor of waterway development that it would relieve railways of their bulky, low grade traffic, which, it is contended, is handled at a loss. Many persons even use the word 'co-operation' as if it means that the railroads voluntarily should turn over part of their business to the waterways, and especially this low grade traffic, such as lumber, grain and coal. The fact is, that if any large railroad system were relieved of all of its low grade tonnage the returns from its remaining business would not permit its continuing operation. It is the low grade business which can be handled in large trainloads at slow speeds, and at a cost much less than that of handling high grade traffic; and because this low grade traffic can be handled at low cost it is often the most profitable part of a railroad's business.

"A comprehensive study of the development and use of waterways and railways not as competitive, but as co-ordinate and complementary parts of a single transportation system, would prevent in future many mistakes which have been made in the past. If the same company owned both a rail and a water line there would not be competition between them which would be carried on until one or the other was driven out. The railway would be able to develop the service of its boat line to whatever extent experience might show was necessary to help its railway lines carry business in seasons of heavy traffic, without developing either rail or water facilities to such an extent as to result in large economic waste. Of course, where railways own boat lines they are more likely to use them as connections and feeders for bringing to their rail lines traffic that they might otherwise be unable to get, than in rendering water service which would merely parallel and duplicate their rail service.

"I am unable to see any difference in principle between railroads being permitted to own and operate boats upon inland waterways and their being permitted to own and operate motor trucks upon highways or streets. There are conditions in our large centers of population and industry owing to which it may be found more economical and efficient for the railways to own and use trucks to pick up and deliver freight to yards at outlying points than to continue the practice of loading merchandise at large central warehouses and switching the cars to freight houses for reclassification and distribution. No one, I suppose, would question that it is the right and duty of the railroads to acquire trucks and use them over highways and streets if this will enable them to render more economical and efficient service. If a railway may properly use motor trucks at one end of its line, can there be any valid reason why it should not be allowed to own and operate boats from the other end of its lines if this will enable it to render more economical and efficient service? Nevertheless, as you know, while there are no legislative restrictions upon the ownership and use of motor trucks by railways, there are legislative restrictions upon their ownership and use of water carriers. The main thing I have sought to emphasize has been the necessity for the development of a comprehensive and constructive transportation policy which will include highways, railways and inland waterways, and which will result in such co-ordination of all these means of transportation as will cause the commerce of the entire nation to be handled with the utmost efficiency and economy.

"Transportation is one of the most important factors in industry and commerce. Therefore, upon the adequacy, efficiency and economy of our transportation service will largely depend the future welfare of our people. I know that many persons, including many advocates of the development of inland waterways, are disposed to regard with suspicion and questionings the policy of the railroads and any suggestions concerning a national transportation policy which may come from a railroad source. Undoubtedly, there have been reasons for this. I am not contending that the policy pursued by the railroads in relation to waterways or many other matters always has been right. I admit there have been abuses in their management, and that some of these have arisen in their relations with the water carriers. I also believe, however, and think you will agree with me, that many millions of dollars have been wasted in efforts to promote navigation on some of our inland waterways which would not have been wasted if a constructive policy in dealing with this important question of transportation had been pursued; and what I am now advocating is the adoption of a policy of developing and using the waterways which will recognize the fundamental principle that traffic should be permitted to move by that route, whether highway, rail or water, which is in fact the most efficient and economical. In this connection, reference should be made to a provision of the Transportation Act of 1920 which applies only to railways, but which is predicated on a principle which seems equally applicable to waterways. The Transportation Act provides that no railway shall in future construct any new line of railroad, or extend any old line, without first obtaining from the Interstate Commerce Commission a certificate that the present or future convenience and necessity of the public require, or will require, the construction and operation of the new or extended line. The purpose of this provision is to prevent increase of railway facilities when and where the means of transportation already provided are sufficient, and when and where, therefore, increase of them would impose an unnecessary burden upon the public. Doubtless in the administration of this provision the Commission would refuse authority to construct a railway line paralleling a waterway, if the waterway already was able to render all the transportation service public necessity and convenience required. From the standpoint of the economic welfare of the public, unnecessary duplication of transportation service by rail lines is no more undesirable than unnecessary duplication of service by water and rail lines. If, as Congress has decided, the Interstate Commerce Commission is the best authority to determine where additional railway lines are, or are not, needed, it seems to follow that it would be the best authority to determine where additional water transportation service was or was not needed. I raise for your consideration, therefore, the question whether the future development of transportation service by water as well as by rail ought not to be placed under the general supervision of the Interstate Commerce Commission by so amending the Transportation Act as to provide that before any waterway is constructed, improved or extended, a certificate must be obtained from the Commission to the effect that the public convenience and necessity require its construction, improvement or extension. Only in some such way, it would appear, can co-ordination in the development as well as in the operation of the railways and waterways be brought about which will in the greatest measure promote the public interest.

"Speaking for the railroad system I represent, we are ready to co-operate with the waterways in every legitimate and useful way. I am not prepared to say we will turn traffic over to them which we can handle, and which we believe we can handle better than they can, but to the extent that the patrons of our railroad desire us to work in co-operation with the waterways I am prepared to say that we will participate in every reasonable arrangement that may be suggested for the establishment of through rates and through routes by rail and water, and for the transfer of freight between the rail and the water carriers. The Transportation Act, as I have already indicated, permits railway officers to take a somewhat more detached view of the general transportation problem than they could in the past, and, as public-spirited citizens, the owners and officers of the railways consider it their duty to co-operate in future with all who are striving to promote a general transportation policy which will further the best interests of all the people and all sections of the country."

## ALLOWANCES TO THE RAILROADS

Settlement by the government with the railroads in the matter of allowance for maintenance in the period of federal control on the basis advocated by the carriers would involve the payment by the government of "possibly one billion dollars," J. C. Davis, general counsel of the Railroad Administration, told the Commission in the argument, December 4, on the interpretation of provisions of the standard contract and the transportation act with respect to the allowances and adjustments to be made because of the differences in the cost of labor and materials in the test period and the six months' guaranty period. The same question, however, is involved in the settlement to be made for maintenance in the period of federal control and therefore the Railroad Administration is vitally interested in the ruling that will be made by the Commission.

Mr. Davis referred the Commission to the brief of the Railroad Administration which was filed some time ago, saying he did not wish to go into an extended discussion of the legal phases of the questions involved. He said, however, he desired to impress on the Commission the "magnitude" of the case, and then gave his estimate of one billion dollars.

"Eight systems have filed claims with the Railroad Administration asking for approximately $203,000,000 as a result of the great adventure the government went into," said Mr. Davis. "Of that amount $138,000,000 is for maintenance and the greater part of that sum rests on the interpretation of the word 'cost' as against 'price.' "

Alfred P. Thom, general counsel for the Association of Railway Executives, reiterated, in his argument, the contentions set forth in his briefs, to which reference has been made in The Traffic World. He declared that it was incumbent on the government to return the roads to their owners in as good physical condition as they were when they were taken over or that the railroads should have the difference in money. He said the test to be applied was a "physical" test and not a "money" test, as contended by the Railroad Administration. He said the settlement should be made on the basis of the actual cost of a given unit of work, covering both the cost of labor and of the materials.

S. T. Bledsoe, of counsel for the Santa Fe, in closing for the railroads, argued that the Director-General, under the standard contract and as a matter of equity, should allow the railroads for depreciation, as well as maintenance, an amount based on present cost of replacement. Chairman Clark and other members of the Commission said they could not follow that argument, because if the railroads had kept their own property they would have based depreciation on the original cost.

## REPORT OF THE COMMISSION

*The Traffic World Washington Bureau*

In obedience to statute, the Interstate Commerce Commission submitted its thirty-fourth annual report to Congress at noon on December 9. The report, measured by volume, is largely historical, dealing with the details of the Commission's stewardship during the year ended about November 20. Recommendations, however, are contained therein, some based on facts and reasons contained in this report, and some on facts and reasoning submitted in preceding ones. For reasons stated in this report, the Commission asked Congress to legislate as follows:

1. That provision be made to authorize and require certification and payment of partial amounts under sections 204 and 209 (g) of the transportation act, 1920, and to authorize the making of a reasonable estimate of the net effect of deferred debits and credits to railway operating income, and the use of the resulting amount, when agreed to by the carrier, in making final certification of the guaranty under 209 (g).

2. That section 1 of the interstate commerce act be amended to provide for the punishment of any person offering or giving to an employe of a carrier subject to the act any money or thing of value with intent to influence his action or decision with respect to car service, and to provide also for the punishment of the guilty employe.

3. That the boiler-inspection act, as amended, be further amended to provide for increases in the number and salaries of inspectors.

4. That appropriate legislation governing the transportation of explosives and other dangerous articles as outlined on pages 77 and 78 of this report be enacted.

For the reasons stated in previous annual reports, we renew our recommendations to the effect:

5. That the power to award reparation be placed wholly in the courts; that a condition precedent to an award of reparation by a court for unreasonable rates or charges be that we have found such rates or charges unreasonable as of a particular time; that the law affirmatively recognize that private damages do not necessarily follow a violation of the act; that provision be made that sections 8, 9 and 16 of the interstate commerce act shall be construed to mean that no person is entitled to reparation except to the extent that he shows he has suffered damage; and that the law should provide that if a rate is found to be unreasonable the rule of damages laid down in the International Coal Case, 230 U. S. 184, should control.

6. That the use of steel cars in passenger-train service be required, and that the use in passenger trains of wooden cars between or in front of steel cars be prohibited.

In the performance of the work, the main features of which are covered in the report, the Commission spent $5,542,373.70. Appropriations for it totaled $5,732,672.18, leaving an unexpended balance, at the time the books were closed, of $190,298.48.

### Car Service Activities

Every class of activity in which the Commission was engaged is touched on in the report, which constitutes a printed volume of 79 pages. More space is devoted to the exercise of the emergency powers granted in the car service amendment to the first section of the interstate commerce law, than to any other single subject. In a way, that recital of the facts may be taken as a defense of what was done in the management of cars, especially coal cars, against the criticisms of the shippers who desired to use such cars for the transportation of building and road construction materials, and the mine operators who objected to the assigned car rule.

Nothing in the tone, however, suggests a defense. The facts are arranged, however, in such way that such members of the House and Senate as are interested enough in the subject to read the report, will know why the Commission pursued the policy shown in the various service orders.

All the facts with regard to the exercise of the emergency powers have been set before the readers of The Traffic World, as current news. The Commission, however, in its review used some figures and made some observations about car supply, strikes, the effect of the foreign demand for coal, a proposal of the railroads to create an essential list of freight, the demands of the construction and road building material men, over-development of mines, failure of consumers to make contracts for coal, and the failure of mine operators to observe their contracts, that are not altogether history. The following, taken from the report, it is believed, will show what the Commission thought on some phases of the shortage of equipment now on longer existing:

"Following the armistice, until August 1, 1919, there was for the most part a surplus of cars. Since August 1, 1919, the revival of industry, requiring increasingly larger amounts of raw materials and supplies, and producing greater quantities of finished products, has resulted in a demand for cars which has continually exceeded the available supply. Such was the condition on February 29, 1920, at the termination of federal control, and to a lesser extent is the condition now. That condition was accentuated to some extent by bad weather, which lasted until after April 1, 1920, but was enormously magnified after that date by strikes which began early in April and lasted well into the summer. These strikes greatly augmented congestion at many important gateways and terminals and necessited the placement and maintenance of numerous embargoes. Hundreds of thousands of cars were held stationary. In effect it was as if about 750,000 cars for the time being had ceased to exist as facilities of commerce. The April congestion caused by the strikes had the effect of reducing by fully one-third the equipment available as compared with that available on the resumption of private control.

"The latest general statistics show that railroads under our jurisdiction own approximately 2,368,876 freight cars used in revenue service, of which 1,062,836 are box cars, 1,009,871 open-top cars with sides, 107,824 flat cars, 83,000 stock cars, and 60,204 refrigerator cars, and 45,141 miscellaneous cars. In addition there are many privately owned tank cars, coal cars, stock cars, and refrigerator cars which bring the total freight cars on railroad lines to approximately 2,500,000. During federal control the Director-General purchased approximately 100,000 freight cars and 4,226 locomotives, which have since been taken by the railroad corporations. Against these additions to equipment must be placed the offset of equipment retired during federal control. With the return of the railroads to their owners on the termination of federal control, the problem was forced upon the carriers and upon us as to how the demands of commerce for the movement of an extraordinary amount of tonnage could be met with an impaired transportation machine. This difficult situation was soon complicated by widespread strikes and cessation and diversion of railroad labor. The effects of a shortage of equipment can be minimized by increasing transportation efficiency and by car conservation. This end has been sought unceasingly by us, though it is clear that the problem cannot be solved without substantial additions to equipment. * * *

"The petition of the carriers by railroad (for the exercise of car service powers) suggested the setting up of a list of essential commodities entitled to priority in the use of transportation. Following the filing of that petition, requests and demands of most insistent character for priority orders, so-called, were laid before us from every quarter and as to substantially every important commodity. It appeared to us that the attempt to classify commodities generally, and to assign relative priorities to them for either the supply or movement of cars, would create an unnecessary confusion and disturbance of industry, and would add to the existing congestion and decrease the aggregate amount of tonnage which could be moved. But we were impressed with the impertive need of special consideration for the movement of coal. * * *

"The demand for the class of equipment described in the orders as 'coal cars' was very great, due to the large road building and construction programs under way, which called for the movement of great quantities of both raw materials and finished products, and of construction materials. Every effort has been made to mitigate the inevitable hardship. From time to time, as the emergency seemed to warrant, by amendments to the definition of 'coal cars,' various types of flat-bottom gondola cars have been released; and permits have been issued authorizing the use of specified numbers of such cars for commodities other than coal when the public interest seemed to require such action. It has been constantly recognized that priority for one class of traffic necessarily means deferring other traffic, and that real hardship must follow the preference given coal. But fuel is a first essential to the life of the individual as well as of industry, and without an adequate supply of fuel there would be no transportation of either raw materials or finished products and no operation of industries. Under the stress which is now relaxing it was impossible to transport all that was offered, and the designation of that which should be moved first was necessarily based upon considerations of sound public policy. * * *

"A factor detrimentally affecting the coal-car supply has been the great increase during recent years in the number of coal mines, while there has been no similar increase in the equipment available for mine distribution. There are now approximately 3,000 more coal mines in operation than prior to the war. The total number of mines is estimated to be 10,634. Of these, 5,888, or 55 per cent, produce less than 10,000 tons of soft coal apiece per year, and an aggregate yield of 10,449,000 tons, which is less than 2 per cent of the entire production. Many of the so-called country bank or wagon mines are not equipped with tipples or arrangements for the dumping of coal into cars. Many are not equipped with private sidings. More than 98 per cent of the needed bituminous coal must be produced by establishing tipple mines, which number about 4,746. To the extent that the limited and fixed number of cars are distributed among 5,888 mines, which produce less than 2 per cent of the total, the general utility and efficiency of car service is decreased. * * *

"The demand for coal for exportation to European countries has been unusually great, and the bidding of foreign buyers against each other and against American consumers has doubtless had a marked effect in increasing the demand for coal in this country and to an even greater extent the price of free coal.

"Repeated and insistent demands have been made upon us that we prohibit the exportation of coal, especially to European countries. Nothing has been found in the law which authorizes such action upon our part.

"The foregoing is a review of the formal steps taken for the relief of the emergency. It was upon us and had to be met. We met it by such means as were available or could be improvised from day to day.

"But to the extent that emergency in the fuel situation can

be traced to the failure of dealers or consumers in regions remote from their sources of supply to purchase or make firm contracts for that supply in season, it is to be hoped that timely and effective action will be taken to prevent recurrence. They can hardly expect that our regulatory powers, which have to do with transportation rather than with distribution of commodities, should be relied upon to relieve them from the consequences of their own inertia, to the inconvenience or detriment of other regions and derangement of the orderly movement of general traffic."

### Financial Matters

In view of the figures showing reduction in car loadings and in view of the allegations of the New England carriers, the declaration under the caption, "Bureau of Finance," that there have been no activities for recovery (of earnings in excess of 6 per cent) except by way of preparation therefor" probably will pass without challenge that the Commission has been dilatory.

Under that same caption, the report deals with the refusal of the Treasury to honor certificates for advances, applications for which were not made before the end of the guaranty period. The report says:

"Section 209 of the transportation act, 1920, provided in respect of practically all carriers for the guaranty for the six months succeeding the federal control period of a railway operating income measured by one-half the average income for the three-year period ended June 30, 1917. This guaranty, however, was extended only to such carriers as accepted the provisions of the section on or before March 15, 1920, and by such acceptance bound themselves to pay over to the government any excess in railway operating income above the guaranteed amount. Acceptances were filed within the prescribed time by 666 carriers.

"The law provided also that upon application to us by any carrier asking that during the guaranty period there be advanced to it from time to time such sums, not in excess of the estimated amount necessary to make good the guaranty, as might be necessary to enable such carrier to meet its fixed charges and operating expenses, we might certify to the Secretary of the Treasury the amounts of, and times at which, such advances should be made. The law authorized and directed the Secretary of the Treasury to make the advances in the amounts and at the times specified in our certificate, upon the execution by the carriers of a contract, secured in such manner as the Secretary of the Treasury might determine, that upon final determination of the amount of the guaranty such carrier would repay to the United States any amounts which it had received from such advances in excess of the guaranty.

"During the guaranty period 243 applications for advances were filed by 148 carriers, upon which advances aggregating approximately $254,000,000 were certified for payment. According to the sworn monthly reports of class I carriers, the amount payable by the United States to make good the guaranty is approximately $600,000,000, or $346,000,000 in excess of the amount already certified. It must be understood, however, that no exact estimate of the amount payable can be given at this time for the reason that many adjustments will necessarily be made in the reports as rendered. Under the transportation act, 1920, we are required to fix the amount of maintenance that may be allowed for each carrier in computing income for the guaranty period, and it may be found that in many cases more has been charged for maintenance than can be allowed under the law. Other adjustments will be necessary.

"The Treasury Department will honor our certificates issued for advances under subdivision (h) of section 209 of the transportation act, 1920, as amended, to meet fixed charges and operating expenses, and based upon estimated amounts necessary to make good the guaranty where carriers applied for such advances during the guaranty period even though the certificates are issued after the close of the period, but the Comptroller of the Treasury has ruled that payments may not be made upon our certificates issued under subdivision (g) of the section for amounts definitely ascertained to be due carriers to make good the guaranty unless such certificates are final and that only one final certificate may be issued to any carrier under this subdivision.

"Many of the carriers to which amounts are due under this section made no application for an advance during the guaranty period; claims affecting railway operating income upon which the guaranty is based may be filed at any time within two years after the close of the period; the adjustments, restatement and eliminations of accounts which we are required by law to effect in determining the amounts of the guaranty may require many months, and in the meantime, although we are able to certify that specified amounts are without question necessary to make good the guaranty in the case of each carrier, the carriers which did not apply for advances during the guaranty period cannot now, under the ruling of the Comptroller of the Treasury, obtain these amounts undoubtedly due them without foreclosing them and us against the assertion and certification of other amounts which may hereafter be found to be unquestionably due under the terms of the statute.

"The immediate payment to some of these carriers of the amounts or parts of the amounts which we can now determine to be certainly due them under the guaranty provisions of the transportation act, 1920, is vital to their meeting operating expenses, fixed charges, and other obligations which they must meet in order properly to serve the public as common carriers, and it is desirable that in case of deferred overcharge and loss and damage claims and other items which affect operating income and the final effect of which cannot be definitely determined at this time, we be authorized to make a reasonable estimate of the net effect of such items and, when agreed to by the carrier, to use it in certifying the amount as final settlement of the guaranty.

"It is therefore recommended that the Congress clearly provide:

(1) So as to permit and require the certification and payment under section 204 of the transportation act, 1920, of partial amounts ascertained in the case of each carrier to be due such carrier under that section,

(2) So as to permit and require the certification and payment under subdivision (g) of section 209 of the transportation act, 1920, of partial amounts ascertained in the case of each carrier as necessary to make good the guaranty to it, and

(3) So as to permit us in the case of deferred debits and credits to railway operating income which cannot presently be definitely determined to make a reasonable estimate of the net effect of such items and, when agreed to by the carrier, to use it in certifying the amount as final settlement of the guaranty under this section."

Under section 210, creating the revolving fund of $300,000,000, the Commission has made loans aggregating $115,767,710, of which $57,790,750 was granted to meet maturities; $28,698,745 for the acquisition of equipment, and $29,278,215 to aid in making other additions and betterment. In the matter of co-operation of state authorities on applications for certificates of convenience and necessity, the report says, it has been prompt, cordial and helpful, generally speaking.

In the course of the year, 1,040 cases were filed on the formal docket, consisting of 900 original and 140 sub-numbers. In the preceding year 695 original and 143 sub-number proceedings were filed. In the year covered by the report, 748 cases were decided and 142 were dismissed on stipulations; 4,208 informal cases were put on the books, a decrease of 246. The Railroad Administration and the railroads joined with the shippers in 1,798 requests for permission to make refunds and reparation amounting to $849,607 was awarded. In addition about 39,000 letters, each equivalent to a complaint, were received.

### Bureau of Tariffs

In speaking of the work of the bureau of tariffs in the newly organized division of traffic, the Commission said:

Notwithstanding our efforts to promote simplicity of tariff publication, questions constantly arise concerning the interpretation and application of tariff rates and rules governing charges for transportation which require investigation and informal rulings, without prejudice to any formal proceedings that may be thereafter instituted.

Pursuant to plans for promoting harmony, carriers have since their return to private control continued in a modified form a system inaugurated by the Director General of issuing to the public announcements of proposed rate changes and conducting public conferences at which interested parties are afforded an opportunity of presenting facts with respect to such proposed changes before they are made effective.

We believe that this system will materially assist in maintaining a spirit of co-operation between the shipping public and the carriers and will tend to lessen the number of disputed matters eventually brought before us for disposition in a formal way.

In the course of the year, 145,426 tariff publications were filed, an increase over the preceding year, largely on account of the general increases in rates and modifications of rules and regulations; 2,524 requests for permission to file on less than thirty days' notice were handled; and 3,306 schedules were rejected for failure to give lawful notice. Rate memoranda numbering 5,146 were prepared for the Commission, shippers, or for other branches of the government.

In the part of the report devoted to the Bureau of Law, there is a full statement of the Kansas City Southern valuation case, in which the Supreme Court of the United States ruled that the Commission must comply with the law no matter how irrational a thing the statute might require it to try to do. In the statement of the case, the Commission reproduced the language in the Minnesota rate case on which it based its report that what the law required could not be done by a rational person.

In the year 25 indictments charging violation of the penal sections of the act were procured and 50 were disposed of.

Concerning the allegations that railroad employes have been bribed by shippers, the Commission's report says:

As a result of the inadequacy of the car supply and of railroad transportation facilities generally during the past year, a practice has grown up among shippers of bribing operating employes of railroad companies in order to obtain transportation services. The demoralizing effects of this practice are far reaching. Bribery of this character in many instances cannot be directly and effectively reached under existing laws. It is, therefore, recommended that the interstate commerce act be amended to provide for the punishment of any person offering or giving to an employe of a carrier subject to the act any money or thing of value with intent to influence his action or decision with respect to car service as defined in the act, or because of such action or decision; and to provide also for the punishment of the guilty employe.

With regard to rules for the transportation of dangerous articles other than explosives, the Commission desires power as specifically conferred as that pertaining to the transportation of explosives. It has prescribed such rules under section 15, but it desires a more definite grant of power. In support of its application for specific power, it points out that in 1918 about 2,000,000,000 pounds of military explosives were transported and that, in addition, the railroads carried about 600,000,000 pounds of explosives for commercial uses. That gave an average of 55,000 cars, of an average weight of 40,000 pounds, on the rails all the time. Yet only two persons were injured and property damage amounting to $33,000 resulted from accidents involving the explosives.

In that same year, under the less rigid rules covering the transportation of dangerous articles, which, the report says, are not fully observed, there were 1,201 accidents, in which 17 persons were killed, 86 injured, and property damage to the extent of $1,300,000 incurred. The Commission thinks the amended law should also cover poisons and explosives not now specifically included in the act, the number of which was greatly increased during the war. Many of them are now devoted to commercial uses. It also asks authority to make changes in the rules on less than ninety days' notice.

## COAL PRODUCTION REPORT

*The Traffic World Washington Bureau*

Lake shipments of bituminous coal amounted to 22,958,000 tons from the beginning of the 1920 season to the week ending November 27, according to the weekly report of the Geological Survey, Department of the Interior, under date of December 4. This was about half a million tons above the 1919 shipments for the same period and less than 7,000,000 tons behind 1918.

For the week ending November 27, 683,570 tons were dumped at the Lake Erie ports for transshipment, a decrease of 28,274 tons as compared with the preceding week.

The total production of soft coal in the week ending November 27 was 11,416,000 tons (estimated). That week included Thanksgiving which was partially observed as a holiday. In the preceding week the output was 11,731,000 tons. In that week loss attributed to transportation increased sharply, the report said, the percentage being 25.5 per cent for the country as a whole. On this subject the report read as follows:

"The outstanding feature of the week was the sharp increase in transportation disability to which losses of 25.5 per cent were attributed. As a basis for comparison one must go back to the week ended October 30, the latest full-time week, when the average transportation loss was 20.6 per cent. Two major causes for the recurrence of car shortage stand out. In the Middle Appalachian region a severe storm put a sudden strain on the transportation system, blocking traffic and disclosing weaknesses in worn-out rolling stock. Transportation losses in the high volatile fields of Southern West Virginia and in Eastern Kentucky ranged from 37 to 44 per cent of full time.

"More important still, in the Northern Appalachian region, was the modification of Service Order No. 20, withdrawing priority for coal-mine use on all except hopper-bottom cars. The new order, effective midnight, November 16, made available large numbers of cars for satisfying outstanding requisitions from other industries using open-top equipment. The order was undoubtedly one cause of the sharp decrease in loadings on Tuesday and Wednesday, but by the end of the week the number of cars available for coal mines had been built up to about the number supplied on Friday and Saturday in recent weeks. The influence of the new order was especially marked in Northern Ohio, the Pittsburgh and adjacent Panhandle districts, Westmoreland County, and Northern West Virginia.

"In Illinois and Western Kentucky a marked improvement in car supply was reported. West of the Mississippi placements of cars continued satisfactory, except in Arkansas, Colorado, and Utah. In the last-named state losses due to transportation declined from 20.1 to 10.2 per cent."

Tonnage handled over tidewater piers during the fourth week in November totaled 1,024,000 net tons, according to reports made to the Geological Survey. A decrease from the preceding week, of 107,000 tons, was due largely to the falling off of exports, which amounted to 399,000 tons, as against 532,000 tons during the third week.

Foreign shipments were less than 60 per cent of those during the record week of October 17, when exports were made at the rate of over 2,900,000 tons per month. The coastwise shipments to New England increased slightly, to 178,000 net tons.

The all-rail movement to New England recovered again during the week of November 27, showing an increase of 236 cars over the total for the preceding week. The American Railroad Association reports 4,706 cars forwarded through the five rail gateways of Harlem River, Maybrook, Albany, Rotterdam, and Mechanicville. Shipments during the corresponding week of 1919 (the fourth week of the bituminous strike) numbered only 386 cars, while in 1918 the total was 2,892.

## INTERMEDIATE RATE ASS'N CASE

*The Traffic World Washington Bureau*

At the afternoon session of December 2, in the argument in the Intermediate Rate Association case, S. J. Wettrick, for the Seattle Chamber of Commerce, complimented Attorney-Examiner Disque's report in general, but took exception to the cancellation of some of the less-than-carload commodity rates, which, he said, were established so as to establish a relationship enabling competitors to meet each other notwithstanding wide variations in the percentage relationship of the classes, which, if it did not exist, would obviate the necessity for such special arrangements. But he could see no good to be attained in again ripping open the rate situation in view of the fact that water competition has been restored and is growing greater. His understanding was that the transcontinental railroads hoped to obtain a decision on this case before feeling constrained to ask for fourth section relief to meet the competition.

Frank Lyon, as attorney for the Luckenbach steamship interests, attacked the Disque report as being founded on a theory that the coast cities, on account of the possibility or existence of competition, are entitled to a rule for making rates differing from the rule on which such rates are made for interior cities, lest the use of the rule for the interior cities deprive the coast of what Disque, in what read like obiter dicta, denominated their natural advantage. Lyon said he thanked the Commission for again permitting him to speak for a class of carriers to which "it owes no obligation." His text was the fear of the railroads, set forth in Disque's report, that the return of the ships would deprive them of the business they have had since the emoluments of transoceanic traffic lured the ships from the coast to coast business. He said his objection was to having the Commission made a "forward-looking organization" for the railroads for their protection from the thing they fear—namely, the return of competition by water carriers. Fourth section relief, he contended, means destruction of shipping, which Congress has indicated it desires to foster, or a forced combination between rail and water carriers whereby they would agree upon the amount of traffic to be taken by each. Lyon said he was representing a selfish interest, even as the attorneys for the railroads were representing a selfish interest.

Commissioner Hall suggested that during the war the ships disappeared from the coast to coast trade, while the railroads performed their patriotic duty of carrying goods.

"Oh, yes, we paid them about $900,000,000 to be patriotic," said Lyon, referring to the margin between what the railroads earned for the government and what it agreed to pay for the use of their property.

Answering questions by Commissioners Daniels and Potter, Lyon said that the Commission might foster the two kinds of carriers by arbitrarily dividing traffic between them. His suggestion was that the Commission make reasonable rates to and from the ports and to and from intermediate points, regardless of competition, and then let the traffic move on whichever rates were the more satisfactory.

Harry Dickinson, for Denver, approved the proposed grading of the class rates and the abolition of L. C. L. commodity rates, provided that something was found to take their places, as, for instance, class scales with proper percentage relationships. He also approved Disque's proposal to have joint through or overhead rates, as he called them, which will ignore the Mississippi as a barrier between the east and the west, equal to ninety per cent of the combination. Railroads should have done that long ago.

J. W. McCune, for the Tacoma Chamber of Commerce, found much to admire and little to criticize in the Disque report, but he hoped there would be no grading and that the L. C. L. rates will not be canceled.

Objection by the eastern cities was voiced in emphatic terms by J. C. Lincoln, for the New York Merchants' Association, and W. H. Chandler, for the Boston Chamber of Commerce and other New England interests. They called attention to the fact that the transcontinental railroads are in favor of blanketing rates at the western end, on account of water competition, but grading them at the eastern end, when fourth section relief has been granted on the same ground. They had in mind the fact that in the equalization of rates the carriers serving Chicago are insisting upon making rates from Pittsburgh and Chicago lower than from New York.

"We think the intermountain cities are entitled to graded commodity rates," said Mr. Lincoln, thereby expressing an opinion contrary to the view of the attorney-examiner, who recommended leaving the commodity rates blanketed, on account of the fear of a return of water competition. "If the western end of the commodity rate adjustment is blanketed, the east should also be blanketed. Graded rates such as exist in the east are not made to meet water competition, but to meet market competition."

Mr. Chandler said he would make no attempt to discuss the western part of the case, but would confine himself entirely to the eastern end, because, under adjustments in effect in

recent years, New England has been shut out of the western markets entirely, except in the case of goods to be procured only in New England. The exclusion has been accomplished, he said, by the grading of rates in such a way that the middle west, under pretense of meeting water competition, has been able to get into the western markets to which the New England section would ship on coast to coast rates, plus the back-haul rates from the ports, but for the graded rates from Pittsburgh and Chicago.

The Commission extended the time for argument on the intermediate rate case December 2 to an unusual hour so as to permit F. W. Burton, for Rochester interests, George N. Brown, for the National Automobile Chamber of Commerce, H. C. Barlow, for the Chicago Association of Commerce, and E. S. Ballard, for the Rubber Association of America, to be heard.

Mr. Burton objected to the Disque plan, because it would leave Rochester to pay the combination on the Mississippi River to the intermountain country instead of having the benefit of the proposed overhead joint rates. He asked that Rochester be put into the proposed Buffalo group.

Automobile shippers, Mr. Brown said, could not load to the class rate minima which would become operative in the event of the cancellation of the carload commodity rates, as proposed by Mr. Disque in his tentative report. This is no time to be increasing rates, he suggested, and especially to make higher charges in the way the automobile industry would be penalized if the Disque report were adopted.

Favoring the class rate adjustment proposed by Disque, Mr. Barlow criticized the proposal on the ground that the differentials proposed on St. Louis traffic would be a little too high.

Mr. Ballard said the proposed cancellation of commodity rates on rubber tires and rubber goods would make the rates on them too high to be borne by the industry, in view of the tendency of commodity prices to come down and stay down.

At the morning session of December 3, H. Mueller said the Disque proposal for a reconstruction of the entire rate structure caused real apprehension in the Twin Cities. He said the commercial and manufacturing interests of the Twin Cities had but little interest in the complaint. Their interest arose only after Attorney-Examiner Disque had made his report denouncing combination rates as relics of the dark ages. His counter suggestion was that Disque evidently thought they were relics only when applied to westbound but not to eastbound traffic, because there is no suggestion that there should be eastbound joint rates for the benefit of the middle west and northwest. There are already joint rates, he said, lower than ninety per cent of the combination. He called attention to the fact that the proposed joint rates, if adopted, would apply to Butte, Mont., which was not involved in the complaint filed by the Intermediate Rate Association. Under the adjustment proposed, he said, it would be cheaper, in many instances, to ship L. C. L. quantities from C. F. A. points to intermountain territory, than to ship in carloads to the Twin Cities or other points in the middle west, and distribute in L. C. L. quantities from the much nearer points. He doubted, he said, whether the Commission desired to foster long-distance L. C. L. traffic.

The unfairness of the proposal, he said, may be inferred from the fact that while, under the proposed scheme, C. F. A. could ship to the intermountain country and the prairie states on joint rates, Twin City shippers would still be called upon to pay combinations on Chicago, the Ohio or Mississippi rivers in shipping in the southeast. Industry and commerce could not survive in the northwest under the proposed class rate adjustment, Mr. Mueller contended. He advocated dismissal of the complaint.

In the matter of the complaint of the Intermediate Rate Association, Ralph Merriam, in behalf of the National Association of Chewing Gum Manufacturers, said he was absolutely neutral. The makers of gum object, however, particularly a manufacturer at Chicago, to the proposal for a class scale to be followed by the cancellation of L. C. L. and carload commodity rates on gum to transcontinental territory. The Chicago manufacturer for whom Mr. Merriam was speaking specifically, in 1919 sent 4,000,000 pounds of gum to transcontinental territory, about half in carloads and the other half in less than carloads. Adoption of the class scale proposed would cause, he said, an increase of 83 per cent and cancellation of the less-than-carload commodity rates would cause an increase of 111.5 per cent.

Such increases, he said, would force the shipper to take his tonnage from the transcontinental lines and forward it via rail to New Orleans and thence by boat, pending the establishment of a factory on the Pacific coast to which the raw material would be carried by boat. The transcontinental carriers now carry some of the raw material and also the finished product over the same rails.

"I'm only a newcomer in this case," said H. A. Scandrett, in opening the railroad side of the case. "I have been in it only during the last ten years, but in those ten years it has always been on my docket.

"I venture to say that the veteran members of this Commission have not heard a new idea or a new fact since the beginning of this phase, and I have no expectation of breaking the precedent while I am on my feet."

In a review of what has happened in the ten years with which he has been connected with the case, Mr. Scandrett, with a solemnity that may have been mock, touched on the many times that Mr. Campbell "had come back" with further suggestions and demands for changes in the fourth section situation; also upon the disappearance of "Frank Lyon and his ships" when profits elsewhere were greater than on transportation from coast to coast through the canal.

With the Disque conclusion that no discrimination had been shown by the commodity rate adjustment, Mr. Scandrett said he heartily agreed, but not with the proposal, in the alternative, that if the carriers will cancel their L. C. L. commodity rates, they may have a class scale, and the proposal for overhead joint rates.

With regard to the proposal of the Railroad Administration coast traffic committees, on which the Disque proposals were founded, Mr. Scandrett called attention to the fact that the committee made their suggestion of rates for application on railroads that were being operated as a single system, and were obviously unfair to the prairie lines when operated by their owners; also that the report did not meet the approval of the superior committee at Chicago, or the director of traffic in Washington. The Disque scale is higher, he said, than the proposal of the coast committees, but. Mr. Scandrett suggested, the effect would be to deprive the carriers of revenues to which they are entitled.

Arguments were completed at the afternoon session of December 3, Fred H. Wood closing for the railroads and J. B. Campbell for the complainant. Mr. Wood's effort was to show that the wise thing for the Commission to do would be to leave the situation as it is, and that the recommendation of the coast committees of the Railroad Administration were erroneous. He said it was so much out of line that the railroads at the hearing would not give it any support. Their opposition to it caused former Chief Examiner Henry Thurtell to ask the railroads for a substitute, he said, and that substitute attracted the attention of the eastern shippers and caused them to get into the case.

In closing the case Mr. Campbell asked the commissioners to take out of their eyes any "water competition" water that the railroads, in their efforts to justify what they have done and what they were trying to continue, might have thrown into them and they would be able to see the facts clearly. He said the duty of the rail carriers was to make reasonable rates to the intermediate points and let the ships take the freight they are fitted to haul in competition with the land lines. He said there could be no arrangement between ocean and land carriers except on an arbitrary basis of so much traffic for the ship and so much for the railroad line. Inasmuch as the Commission has no control over the rates of the ocean carriers, there can be no such arrangement under the control of the Commission, Mr. Campbell said.

## INCREASED STATE FARES

*The Traffic World Washington Bureau*

The Commission, December 8, issued two special sixth section permits authorizing railroad tariff filing agents to file special form supplements, on or before January 5 and January 10, to make effective the higher rates and passenger fares authorized by the Commission in the Illinois and Wisconsin passenger fare cases, without regard to the ordinary tariff filing rules.

Permission No. 51169, pertaining to Illinois intrastate traffic, authorizes G. J. Maguire and C. A. Fox to file special form tariffs on or before January 5. These special form supplements may be similar to the percentage form supplements filed to make the Ex Parte No. 74 advances operative on August 26, so as to give application on Illinois intrastate traffic to the mileage rates now confined to interstate business moving in Illinois.

Permission No. 51209 authorizes Maguire to do the same things for carriers whose lines lie in Wisconsin.

An investigation into the Arizona intrastate rate situation has been ordered by the Commission in No. 11971, Arizona Rates, Fares, and Charges, but no date for hearing has been fixed. The Arizona Corporation Commission declined to authorize any increases in intrastate rates, on application of the railroads for authority to make effective percentage increases equivalent to those fixed on interstate traffic in Ex Parte 74. The carriers then petitioned the Commission to remove the discrimination against interstate commerce resulting from the refusal of the state commission to grant increases.

### F. C. & G. BOND ISSUE

The Fernwood, Columbia & Gulf Railroad Company, Fernwood, Miss., has applied to the Commission for authority to issue $300,000 of refunding mortgage bonds. The applicant proposes to use the bonds in the procurement of equipment and also as a pledge for a loan of $33,000 from the government.

# Changes in Act to Regulate Commerce

(Eleventh and last of series of articles written for The Traffic World by Karl K. Gartner, attorney, Interstate Commerce Commission.)

Section 21 requires the Commission to file an annual report as specified. No change has been made in this section.

Section 22 has not been changed. This section contains one provision which is of interest in connection with the consideration of certain phases of "Shreveport Cases" under section 13. It provides that nothing in the act shall prevent a carrier from carrying, storing or handling property free or at reduced rates for the United States, or municipal governments, and in other cases which are of no particular interest here. A number of the intrastate rate cases involve rates fixed by the state regulating bodies which do not permit the Ex Parte 74 increases on intrastate shipments of road-building material. The freight rate on such material is borne by township or county organizations which come within the term "municipal governments." The provision cited here is urged in some quarters as authority for this action by the state authorities.

The other provisions relate to instances in which carriers may grant free transportation and also provides for issuance of the 5,000-mile joint interchangeable mileage tickets and baggage privileges available therewith.

Section 23 has suffered no change. This section is the one, little noticed, which gives to any person alleging a violation by a carrier of any provisions of the act which prevents such party from having interstate traffic moved by said carrier at the same rates as are charged, or upon terms or conditions as favorable as those given by said carrier for like traffic under similar conditions to any other shipper, the right to a writ of mandamus against such carrier, commanding it to transport the traffic, or to furnish cars or other facilities for transportation.

It will be noted that this remedy only lies to secure the same service that is accorded others under similar circumstances, etc. The carrier cannot be required by mandamus under this section, to receive and transport certain freight unless it is receiving and transporting like freight under similar circumstances for others. This substantive expression of the common law right of mandamus goes no further than the enforcement of duties imposed upon the carrier by the act, compliance with which can be enforced by writ of mandamus even under common law practice. This section does not, therefore, reach the deficiency pointed out in the discussion of section one indicating that there is no duty imposed upon the carriers under section 1 or any other section of the act to receive and transport freight tendered in accordance with their tariffs. The present section only authorizes a writ of mandamus if the carrier can be shown to have received and transported like freight for others under similar circumstances. A mandamus would lie in such a case even under the common law, because such a situation would be in violation of the carrier's duty under section 3 of the act.

Section 24 has been changed to the extent of increasing the personnel of the Commission from nine to eleven members, whose salaries are now fixed at $12,000 per annum, instead of $10,000, and providing that the secretary be paid $7,500 per annum.

Section 25 is new. This section, composed of five numbered paragraphs, imposes certain duties upon carriers by water in foreign commerce.

Under paragraph 1 all such carriers must, within thirty days from the effective date of the act and regularly thereafter, file with the Commission a schedule showing for each of its steam vessels intended to load general cargo at ports in the United States for foreign destinations, (a) the ports of trading, (b) the dates upon which such vessels will commence to receive freight and dates of sailing, (c) the route and itinerary such vessels will follow and the ports of call for which cargo will be carried.

Paragraph 2 provides that upon application of any shipper a carrier by railroad shall make request for, and the carrier by water shall name a specific rate applying for such sailing upon such commodity as shall be embraced in the inquiry and shall name in connection with the rate, port charges, if any, which accrue in addition to the vessel's rates and are not included in the rail rate or published as in addition thereto or included therein.

Vessel rates, if conditioned upon quantity of shipment, must be so stated and separate rates may be provided for carload and less-than-carload shipments.

The carrier by water upon advices from a carrier by railroad, stating that the quoted rate is firmly accepted as applying upon a specifically named quantity of any commodity, shall, subject to such conditions as the Commission by regulation may prescribe, make firm reservation from unsold space in such steam vessel as shall be required for its transportation and shall so advise the carrier by railroad, in which advices shall be included the latest available information as to prospective sailing date of such vessel.

Under paragraph 3, as matters so required to be stated in such schedules are changed or modified, the carrier shall file with the Commission such changes, as early as practicable after such modification is ascertained in accordance with regulations prescribed by it.

The information contained in such schedules shall be published by the Commission in compact form for the information of shippers of commodities throughout the country. The publication shall be distributed to all railroads of the country in such numbers that every agent located in towns to be specified by the Commission shall have copies, so that every community of sufficient importance from the standpoint of export trade shall have opportunity to know the sailings and routes and to ascertain the transportation charges of such vessels engaged in foreign trade.

Each railroad receiving such copies shall distribute same through its agents and shall maintain such publication as it is issued from time to time in the hands of its agents.

Under paragraph 4, a through bill of lading shall be issued by the railroad to which property is delivered pursuant to the terms of this section. Such bill shall name separately the charge to be paid for the rail transportation, the water transportation and port charges, if any, not included in the rail or water transportation charges. The liability of the rail carrier does not extend beyond delivery to the vessel, and the Commission shall prescribe the form of such bill of lading subject to such limited liability on the part of the water carrier as it is entitled under the law.

In all such cases it is made the duty of the carrier by railroad to deliver such shipments to the vessel as a part of its undertaking as a common carrier.

Paragraph 5 provides that the issuance of the through bill of lading covering shipments provided for in this section shall not be held to constitute "an arrangement for continuous carriage or shipment" within the meaning of the act.

This is of importance as indicating that "an arrangement for continuous carriage or shipment," as that phrase is used in the amended section 1, paragraph 1, sub-paragraph (a), contemplates an operating arrangement as distinguished from a tariff arrangement, as was pointed out in the discussion of section 1, paragraph 2, sub-paragraph (c).

Section 26 provides that the Commission may require any carrier by railroad subject to the act to install train control and automatic train stop devices which comply with specifications to be prescribed by it. The railroads are to have two years from date of any installation order within which to comply. The railroad is not to be held negligent because of its failure to install such devices upon a portion of its railroad not included in any order. A certain penalty is provided for refusal or neglect to comply with any orders issued under this section.

This section is new and provides that the amended act may be cited as the "Interstate Commerce Act."

Any consideration of changes in the substantive law of carriers necessarily invites a conjecture as to further changes that should be made. Several changes that should be made in the interstate commerce act have been suggested in these discussions. These suggestions do not, of course, include all changes that might be made, but only certain changes that should be made. That these suggestions may receive the serious consideration of the shipping public and the officials of the carriers interested in revision of laws, a recapitulation is here offered of the respects in which this act should be further changed:

1. The word "partly" should be inserted in sub-paragraph (b) of paragraph 1 of Section 1 just before the last words "by water." See discussion in first article.

2. Paragraph 11 of Section 1 should be amended by inserting after the word "service" in the third line "to enable them to perform the transportation for which they publish rates, fares or charges." See discussion in second article.

3. Amend paragraph 7, Section 6, by adding at the end thereof: "All carriers of freight or passengers subject hereto shall receive and transport all freight or passengers which by their tariffs they hold themselves out to carry in accordance with their duty so to do as governed by the common law. Provided, That no limitation recognizable at common law upon the duty to receive and transport freight which a carrier subject hereto holds itself to carry, will be available to any such carrier except an embargo based thereon be filed with the Commission and notice thereof be given to the shipping public in accordance with the requirements of paragraph 3 hereof." See discussion in first and fourth articles.

4. Amend paragraph 7, Section 6, by inserting after the word "time" in line 12 thereof: "Provided, That transportation charges assessed upon rates not otherwise in violation of this act which through error in tariff publication, oversight, improper interpretation of tariff or otherwise are higher than other rates likewise not in violation of this act, shall be unlawful to the

extent they exceed the charges based upon such lower rates, if it be found in any proceeding by the Commission that such lower rate or rates might also have applied; Provided further, That where freight is tendered for shipment unrouted and more than one route is available under the published tariffs duly on file, at rates one of which is lower than the others, it shall be the duty of the carrier receiving such shipment to forward same over such lowest rated route and, failing this, to make refund of any charges assessed in excess of those that would have accrued had the shipment been so forwarded."

5. Section 17 should be amended by providing in appropriate language that one division of the Commission consisting of three members shall be designated as the Administrative Division and that all functions of the Commission which do not require a formal hearing as a condition precedent to action by the Commission under the act as now existing or thereafter amended shall be performed by such Administrative Division. That the President by and with the advice and consent of the Senate shall designate from the personnel of the Commission the three members who shall serve permanently upon such Administrative Division and that such members shall be thenceforth relieved from any other duties imposed upon the Commission. That all functions of the Commission which require a formal hearing as a condition precedent to action by the Commission shall be performed by the members of the Commission not designated as members of the Administrative Division and that such Commissioners shall be relieved from responsibility for the performance of any duties required of the Commission which are by this amendment assigned to the Administrative Division to execute. That duties so allotted to the Commissioners not designated on the Administrative Division shall be designated as the judicial functions of the Commission and that the divisions which the Commission is now authorized to create for the expedition of its judicial functions shall be designated as Judicial Divisions. See discussion in ninth article.

6. Section 24 should be amended, increasing the number of Commissioners to twelve by substituting the word "twelve" for the word "eleven" in the second line thereof. See discussion in ninth article.

In the fifth article it was recommended that Section 15-a be repealed entirely. Supch action involves a legislative policy which it is not the purpose of this discussion to influence one way or the other. The recommendations here recapitulated do not involve matters of legislative policy but are simply amplifications of the act, suggested to remove ambiguities and authorize changes of routine designed to increase efficiency.

## HEARING ON SECTION NO. 28

*The Traffic World Washington Bureau*

Opposition to the enforcement by the United States Shipping Board on January 1 of section 28 of the merchant marine act was voiced by representatives of San Francisco, Tacoma and the Northern Pacific and Chicago, Milwaukee & St. Paul railroads at the hearing before the first open session of the new Shipping Board December 6. The Chamber of Commerce of Los Angeles, however, sent a letter to Chairman Benson urging enforcement of the section.

Those opposing application of the section directed much of their argument more to the wisdom of the legislation and its effects as viewed by them rather than to the question of whether there are now adequate American shipping facilities to handle exports and imports. Chairman Benson and Commissioner Thompson called attention to the fact that the only question for the board to determine was whether there was adequate American tonnage and said that if the board found there was, it had to enforce the law. Arguments as to alleged evil effects of the legislation should be made before Congress, they pointed out, and in this connection it developed that efforts will be made to have Congress repeal or amend the section.

J. W. McCune, representing the traffic and transportation bureau of the Tacoma Chamber of Commerce, preliminary to submitting that port's objections to the section, said he did not represent any steamship companies or foreign shipping interests, but only the shippers of Tacoma and that city as a port.

"We are influenced only by self-preservation," said he, "but we favor the development of the most extensive merchant marine possible under the American flag."

Mr. McCune said Tacoma had not had an opportunity to appear before the congressional committees in regard to the section, because the copy of the bill containing section 28 reached them the first part of June and the bill was passed and became a law on June 5, 1920. He said the coastwise trade had been properly reserved for American ships, but that Tacoma felt that as to foreign shipping vessels under foreign registry should not be excluded from participation in the carriage of American exports and imports, the end to be accomplished by section 28. The Pacific coast, he said, would be most affected by the application of the section.

Strictly speaking, Mr. McCune said, there are no export and import rates, but that those rates so termed were water competitive rates made to meet water competition through the Panama Canal.

As an example of what the effect of enforcement of the section would be, Mr. McCune cited the export rate on steel from Pittsburgh to the Pacific coast prior to Ex Parte 74, 60 cents a hundred, or $12 a ton. The total rate to the Orient, he said, was $24 a ton. He said that rate was applied to meet the competition via New York and the Panama Canal. He said if that rate could not be applied on steel shipments carried by vessels of foreign registry, the foreign vessels would go to the Atlantic ports, and the result would be that the traffic which has gone to the Pacific ports would be diverted to the Atlantic ports, the foreign vessels making a rate plus the freight rate from Pittsburgh to New York.

Mr. McCune said after the passage of the law, a conference was held with Senator Jones, chairman of the Senate commerce committee, and generally regarded as sponsor for the merchant marine act, at Tacoma, and that the senator said he was not responsible for section 28, but that the Shipping Board had urged its acceptance.

"The Shipping Board is proud of the responsibility," interrupted Chairman Benson.

Mr. McCune said he had recently been advised by the chairman of the board that in all probability section 28 would be made operative, at least as to certain ports, after January 1. Referring again to the diversion of traffic from the Pacific ports to the Atlantic ports, he said W. L. Clark, of the Pacific Steamship Company, had said that the Shipping Board and the Interstate Commerce Commission could prevent that happening by influencing the routing of traffic through the permit system. Mr. McCune was not sure that those bodies could accomplish that result. He recommended that the section be suspended for another six months and that the board give six months' notice of the effective date of application of the section.

Commissioner Teal inquired as to the facilities of American tonnage at present for the handling of high-class freight such as silks and tea from the Orient through the Puget Sound ports. McCune said there were no American vessels equipped to handle that class of freight. The same question was put to W. L. Clark. He said there was adequate tonnage, except with respect to such high-class freight as silk.

J. G. Woodworth, vice-president of the Northern Pacific in charge of traffic, said his company had no traffic arrangements with any steamship company, but that the enforcement of section 28 would "fall very heavily on the transcontinental roads and the Pacific ports because all of our export and import business is handled under these exceptional rates." The business handled by the Northern Pacific, he said, originates in the eastern states and is directly competitive with other carriers via New York and other Atlantic ports and the Gulf ports. He said if foreign carriers could stop at New Orleans or New York and get cargoes there for the Orient, "then we are injured, because a large proportion of our export and import business is with shipowning nations." As to the adequacy of American shipping facilities at Puget Sound ports to handle all exports and imports, he said those facilities were inadequate.

"We have assumed there was no question as to further suspension of the law," said he. "Time should be given for amendment by Congress to avoid the very harmful and injurious effects of the section."

Commissioner Teal said that for the information of the board he would ask Mr. Woodworth as to the power of the Shipping Board or the Interstate Commerce Commission to route traffic so that the Pacific ports would not be deprived of the handling of tonnage if the section became effective and foreign vessels sought cargoes for the Orient at New York or other Atlantic ports.

"I have made a careful study of the question," said Mr. Woodworth, "and I don't see how that could be done under the existing law, nor do I think it would be desirable to have a law under which it could be done. You can't take business from one port and put it into another port."

That was done with traffic during the war by the Railroad Administration, he continued, but he did not think it wise or practicable under normal conditions.

"Those things are not acceptable to the people," said he.

Chairman Benson inquired whether, if there were great congestion at the port of New York, for instance, the Interstate Commerce Commission could not relieve the congestion by the routing of traffic.

Mr. Woodworth said that might be done in an emergency for a limited period of time, but to do it as a general thing would not be wise.

Edward Chambers, vice-president of the Santa Fe in charge of traffic, said there were no export and import rates as such, but that they were "equalizing rates," made to equalize a lower rate via some other port. He suggested a conference to be participated in by representatives of the Shipping Board, Interstate Commerce Commission, the railroads and manufacturing interests for the purpose of working out a plan for making section 28 effective in such a way that no harm would result to

any port. He said the proper way to distribute traffic was by means of the rail rates.

Chairman Benson asked how Mr. Chambers looked on the efforts of the board to develop ocean shipping out of the port of Los Angeles with respect to the Santa Fe. Mr. Chambers said he was very much interested in that and was anxious to see the board go forward with its plans.

Mr. Chambers said he would dislike very much to see anything done, discussing again the situation with respect to section 28, that would disturb the present equalization of rates.

Seth Mann, appearing for the San Francisco Chamber of Commerce, urged further suspension of the section for six months until a thorough investigation could be made as to the adequacy of American tonnage in the various routes. He declared the enforcement of section 28 "is sure to bring trouble instantly to the Pacific coast." He said the rates involved applied only to the Pacific coast, except as to a limited way to the Gulf ports, and that application of the section would not affect the Atlantic ports, because there were no such rates to those ports. He believed that enforcement of the section would cause foreign ships to go to the Atlantic coast and that traffic eventually would move via the Atlantic ports, with the result that there would be very little tonnage for American ships at the Pacific ports. He read a letter from the foreign trade expert of the San Francisco Chamber of Commerce to the effect that the application of section 28 without the enforcement of section 34, which relates to abrogation of commercial treaties and which President Wilson has declined to enforce, would result in discrimination against American vessels in foreign ports and that it would be difficult for them to obtain return cargoes. Application of section 28 would be "most injurious to trade," he asserted.

G. E. Stolp, Oriental freight agent for the Chicago, Milwaukee & St. Paul, filed a written protest against section 28. He said the application of domestic rates on shipments which may be cleared in foreign steamers from Pacific coast ports for the Orient would inevitably prevent foreign steamers from handling any of that business and would divert the traffic to foreign vessels at Atlantic ports via the Panama and Suez canals to the Orient.

At the conclusion of the hearing Admiral Benson said the question of whether the section should be enforced depended on whether there was available sufficient American tonnage of such character as to handle the export and import traffic through the Pacific coast ports. He indicated that the board regarded the question at issue still open, but he said it should be kept in mind that there was now a large amount of American tonnage in reserve.

In a conference with representatives of the press, after the hearing on section 28 of the merchant marine act, Admiral Benson said the law would be put into effect as soon as the board determined that adequate American shipping facilities existed at each port to handle the business there. The chairman indicated, however, that a further suspension of the section probably would be recommended as to particular ports and that it might be made operative as to particular ports. He appeared to be satisfied that the board could apply the section in that way. In other words, the board might certify that there was not adequate tonnage at San Francisco and Tacoma, but find to the contrary at the port of Los Angeles.

Chairman Benson said it was the desire of the board to develop the ports of the country along natural and normal lines and to aid in the development of business by providing ample port facilities near sections producing commodities and products for export.

"The fact that it has been the custom of shippers and carriers to carry commodities to a port located in some particular part of the country," said he, "does not indicate that the board will continue to adhere to that custom. We are anxious to see all ports developed along normal lines and utilized to their full capacity."

## C. & O. SECURITIES

The Chesapeake & Ohio Railway Company has applied to the Commission for an order authorizing the United States Mortgage & Trust Company, as corporate trustee under the applicant's mortgage and deed of trust of December 1, 1910, to authenticate and deliver $2,699,000 of first lien and improvement twenty-year five per cent mortgage bonds. It also asks authority to pledge the bonds with other securities for a loan of $3,759,000 from the government. The loan has been approved by the Commission. In another application the Chesapeake & Ohio asks for authority to issue $4,500,000 of 6½ per cent equipment trust certificates. The certificates have been subscribed for and sold to Kuhn, Loeb & Co. and the National City Company at 95 per cent of the face amount thereof, said price being the equivalent of an interest basis net to the applicant of about 7¼ per cent per annum. The proceeds will be applied on the purchase of equipment.

# LEHIGH VALLEY LOSES CASE

*The Traffic World Washington Bureau*

The U. S. Supreme Court, Dec. 6, in an opinion by Associate Justice Clarke, reversed the federal court of the southern district of New York in the anti-trust suit against the Lehigh Valley, its coal company, and its sales company, holding that that combination was in violation of the Sherman law and the commodities clause of the interstate commerce act, deliberately planned as far back as the late sixties, and consistently carried on both before and after the passage of the Sherman law and the commodities law. The Supreme Court's direction to the lower court is to decree a disposition of capital stock, bonds, and other evidences of indebtedness, so that the companies constituting the Lehigh combination will be independent of each other.

Following the Commission's decision in the Meeker case in 1915, the court held that the contract between the Lehigh Coal Company and the Lehigh Sales Company, whereby the former sold all its coal to the sales company "before transportation began," was a device for evading the commodities clause. That contract, the court said, was, in substance and effect, a contract with itself, the terms of which the railroad company could determine in its discretion. The decision is sweeping on every point raised by the railroad company and its subsidiaries.

Associate Justice Clarke, after reciting the history of the case and the history of the company since the latter's organization in the early 60's, said:

"There is much more in the record to like effect, but sufficient has been stated to make it clear beyond controversy that the coal company was organized and conducted as a mere agency or instrumentality of the railroad company, for the purpose of avoiding the legal infirmity which it was thought might inhere in the owning of coal lands and in the conducting of coal mining, shipping and selling operations by the railroad company, and that the policy of purchasing and leasing coal lands tributary to its lines for the purpose of controlling interstate trade and commerce in anthracite coal and of preventing and suppressing competition therein, was deliberately entered upon by the railroad company, and in combination with its agency, the coal company, was consistently pursued, with increasing energy and scope after the passage of the Anti-Trust Act, until the commencement of this suit, unless these purposes and results, in point of law, were modified and cured by the organization in 1912 of the sales company and by the functions which it performed—which remain to be considered.

"On January 11, 1912, the board of directors of the railroad company requested the directors of the coal company 'to consider the propriety of organizing a sales company' and of entering into a contract with it when formed 'for a limited time' * * * for the purchase and sale by it 'of the coal mined, purchased and owned by the coal company.' The board also requested that the privilege of subscribing for the stock of the new company be extended, 'not to the railroad company, but, pro rata, to the common and preferred stockholders of the railroad company.' As if anticipating compliance with its request on the part of the coal company, of which it owned all of the stock, the officers of the railroad company were authorized at the same meeting of the board to take such action and make such conveyances as might be deemed necessary or advantageous in perfecting the sales arrangement with the new company to be organized, and in aid of the enterprise a dividend of ten per cent on the stock of the railroad company was declared payable on February 26, which amounted in the aggregate to $6,060,800.

"On the same day the board of directors of the coal company resolved: that the new sales company should be organized, as requested by the railroad company, with a capital stock of $10,000,000, but that only $6,060,800 of it should be issued; that when the new company was formed the coal company should, 'if possible,' contract with it for a 'limited time' for the sale to it 'of all coal which shall be mined, purchased, owned or acquired' by the coal company during the term of the proposed contract, so that the title to such coal should vest in the sales company 'before the transportation thereof shall be commenced.'

"The privilege of subscription to the capital stock of the new company was restricted to the stockholders of the railroad company.

"The sales company was promptly organized and the minutes of the company show that slightly less than 97 per cent of the stock was subscribed for by stockholders of the railroad company.

"The sales company had seven directors. One of these, J. W. Skeele, who was also elected president, had been general sales agent of the coal company; another, W. R. Evans, had been assistant to the general sales agent of the coal company; another, L. D. Smith, was a director of the railroad company, and a fourth, Paul Moore, was a son of a large stockholder in the railroad company. The vice-president of the company, G. N. Wilson, had been general auditor of the railroad company, and the treasurer, W. J. Burton, had been employed as assistant secretary of the coal company.

It is too plain for discussion that with a company thus organized and officered, the making of a contract by the coal company for the sale of all of its coal to the sales company was,

in substance and effect, making a contract with itself, the terms of which it could determine in its discretion.

"Immediately after the organization of the sales company the anticipated contract between that company and the coal company for the purchase of all the coal which the latter might mine or purchase was entered into and bears date March 1, 1912. This contract was to continue for ten years unless terminated in the manner which it provides for, and its terms are so nearly identical with the earlier Lackawanna contract, which is considered in United States vs. Delaware, Lackawanna & Western R. R. Co., 238 U. S. 516, that the judge who tried this case below, with entire propriety, says that the differences between the two are 'wholly unsubstantial' (225 Fed. Rep. 401). This court held that the contract in the Lackawanna case was void because violative of the provisions of the Anti-Trust Act and the commodities clause of the act to regulate commerce.

"The discussion of the Lackawanna contract is so full and satisfactory in 238 U. S. 516, that it would not serve any useful purpose to comment in detail upon the contract which we have here. It will suffice to say that the provisions of the Lackawanna contract, which were clearly determinative of the former decision by this court, are plainly the same in substance, and almost exactly the same in form, as those in the contract we are considering, viz.: The agreement of the coal company (1) to sell and of the sales company to buy all of the coal mined by the coal company from lands owned or leased by it, together with all coal which it might purchase; (2) that the prices to be paid for the more important grades of coal shall be sixty-five per cent of the New York prices—the two contracts are in precisely the same words in this respect; (3) that, with negligible exceptions, the sales company is to sell no other coal, for itself or for any other, than that 'purchased' from the coal company; (4) that the coal company shall lease all of its facilities, structures and trestles to the sales company; (5) that either party shall have the right to abrogate and cancel the contract upon giving to the other six months' notice of its desire so to do; (6) that the sales company shall not buy coal except from the coal company—a provision which excludes the sales company, potentially a strong competitor, from the market. The coal company purchased 2,960,000 tons of coal in 1911 in addition to that which it mined.

"These are the contract provisions which led this court, in the former case, to hold that a corporation organized and circumstanced as is the sales company, which we have here—subject to be stripped at the will of another of all of its business and of all of its facilities for carrying on the business for which it was incorporated, was neither an 'independent buyer nor a free agent.'

"Being entirely satisfied with the reasoning upon which the Lackawanna case proceeds to its conclusion, we hold now, as it was there in principle held: that the purchase in form by the sales company did not so dissociate the railroad company from the transportation of coal in which it was interested as to meet the requirements of the law, that the contract, nominally of purchase, was so calculated to restrain interstate trade as to be obnoxious to the anti-trust act of Congress, and that for this reason it is unlawful and void.

"It will be of service in determining the purposes of the defendant railroad company with its corporate subsidiaries in the activities thus discussed, to recall the history of the defendant railroad company, as it appears in the decisions of this and of other courts.

"In 1892 the defendant railroad company and the Central Railroad Company of New Jersey leased their lines of railway for the term of 999 years to the Reading Railroad Company, a parallel competing carrier extensively engaged in mining, marketing and selling anthracite coal. This combination, had it become operative, would have gone far toward monopolizing the interstate transportation and trade in anthracite coal of our entire country, but all operations under the lease of the Central Railroad Company of New Jersey were enjoined by the New Jersey courts, for the reason that it was deemed to be in restraint of trade, against public policy and calculated to partially destroy competition in the production and sale of anthracite coal, a staple commodity of the state. Stockton, Atty.-Gen. vs. Central R. R. Co., 50 N. J. Eq. 52. Thereupon the lease of defendant's property was abandoned and surrendered.

"Six years later, in 1898, the defendant railroad company combined with the Reading and four other railway companies to contribute a large sum of money, which was successfully used to prevent the construction of a projected, competing line of railroad from the anthracite fields to tidewater. Of this enterprise this court said: 'We are in entire accord with the view of the court below in holding * * * that the transaction involved a concerted scheme to combine for the purpose of restraining commerce among the states, plain violation of the Act of Congress of July 2, 1890, United States vs. Reading, 226 U. S. 324, 355.'

"Four years later, in 1902, the defendant railroad company united with the Reading and four other anthracite carriers in a combination to control the entire tonnage of coal produced by independent operators along the lines of their respective railways. The device this time resorted to was a contract to purchase all the coal produced by independent mines, then opened or which might thereafter be opened by the vendors, and to pay therefor sixty-five per cent of the market price prevailing at tidewater points at New York, to be computed from month to month by an arbitrator to be selected by agreement. These contracts were elaborately considered and unsparingly condemned by this court in the case which is cited, and the conclusion reached was that the defendants in that case had unlawfully combined, by and through the instrumentality of the sixty-five per cent contract, for the purpose of controlling the sale at tidewater of the independent output of anthracite coal. The contracts were declared to be unlawful and were ordered cancelled, 226 U. S. 370, 371, 373.

"In 1911, in Meeker & Company vs. Lehigh Valley R. R. Co., 21 I. C. C. 129, 154, 163, the Interstate Commerce Commission held that the only line of demarkation between the Lehigh Valley Railroad Company was one of bookkeeping; that the railroad company 'had monopolized the coal field served by it' and that it had been guilty of unjust discrimination and of charging unreasonable rates for which reparation was awarded, 23 I. C. C. 480. This decision was sustained by this court in Meeker & Company vs. Lehigh Valley R. R. Co., 236 U. S. 412.

"And yet again, in 1915, the Interstate Commerce Commission, after an investigation extending over three years, in which the defendant railroad company and all other initial carriers of anthracite were parties, held that the rates charged by the defendant and other carriers to tidewater and to certain interior points were unreasonable; that by trackage and other arrangements they had extended advantages to their subsidiary coal companies, to the prejudice of other shippers; and that concessions as obnoxious as 'direct cash rebates' had been made to such coal companies. (In the Matter of Rates, Practices, Rules and Regulations Governing the Transportation of Anthracite Coal, 35 I. C. C. 220.)

"This history of almost twenty-five years casts an illuminating light upon the intent and purpose with which the combination here assailed was formed and continued. Standard Oil Co. vs. United States, 221 U. S. 1, 76.

"Without further comment, this discussion of the record requires us to conclude that it is clearly established that, prior to the enactment of the anti-trust act, the railroad company, in combination with its coal company subsidiary, deliberately entered upon a policy making extensive purchases of anthracite land tributary to the railroad company's lines, for the purpose of controlling the mining, transportation and sale of coal to be obtained therefrom and of preventing and suppressing competition, especially in the transportation and sale of such coal in interstate commerce, and that this policy was continued after the passage of the anti-trust act with increasing energy and tenacity of purpose, with the result that a practical monopoly was attained of the transportation and sale of anthracite coal derived from such lands.

"The area of the anthracite territory is so restricted that to thus obtain control of the supply of such coal on a great system of railway (the amount transported exceeded one-fifth of the entire production of the country for the year before this suit was commenced) by a combination of corporations, such as we have here, and by such methods as we have seen were employed, effected a restraint of trade or commerce among the several states and constituted an attempt to monopolize and an actual monopolization of a part of such trade or commerce in anthracite coal, clearly within the meaning of the first and second sections of the anti-trust act, as they have frequently been interpreted by this court. The Standard Oil Co. vs. the United States, 221 U. S. 1, 61; New York, New Haven & Hartford R. R. Co. vs. Interstate Commerce Commission, 200 U. S. 361, 392, 393; United States vs. Union Pacific R. R. Co., 226 U. S. 61; International Harvester Co. vs. State of Missouri, 234 U. S. 199, 209; United States vs. Delaware, Lackawanna & Western R. R. Co., 238 U. S. 516, 533; United States vs. Reading Co., 253 U. S. 26.

"Since we have also found that the contract between the coal company and the sales company was a mere device to evade the commodities clause of the interstate commerce act and therefore void, it results that the decree of the District Court must be reversed and the case remanded with instructions to enter a decree, in conformity with this opinion, dissolving the combination effected through the intercorporate relations subsisting between the Lehigh Valley Railroad Company, the Lehigh Valley Coal Company, Coxe Brothers & Co., Inc., the Delaware, Susquehanna & Schuylkill Railroad Company and the Lehigh Valley Sales Company, with such provisions for the disposition of all shares of stock, bonds, or other evidences of indebtedness, and of all property of any character, of any one of said companies owned or in any manner controlled by any other of them as may be necessary to establish their entire independence of and from each other. The contract of March 1, 1912, between the coal company and the sales company must be decreed to be void and all contract relations between the two companies enjoined which would serve in any manner to render the sales company not entirely free to extend its business of

buying and selling coal where and from and to whom it chooses with entire freedom and independence, so that it may in effect, as well as in form, become an independent dealer in coal, and free to act in competition, if it desires, with the defendant coal company or railroad company.

"As to the New York & Middle Coal Field Railroad & Coal Company, the G. B. Markle Company, the Girard Trust Company and the individual defendants, the bill must be dismissed."

## REPARATION CLAIMS

The National Industrial Traffic League has issued the following to its members:

"We have received a good many inquiries from our members regarding claims for reparation on shipments which moved prior to federal control. In many instances, complaints were not filed until after the period of two years had elapsed, but if the period of federal control were excluded, the claims for reparation could be sustained.

"This point was squarely involved in Docket No. 11013, Western States Portland Cement Company vs. The Director-General, Missouri Pacific Railroad Company et al., 59 I. C. C. 195 (The Traffic World, Nov. 6, 1920, p. 849). In that case, the Commission held that 'excluding the period of federal control from the computation, the complaint was filed within two years from the time the cause of action accrued, and is thus within our jurisdiction.'

"An award of reparation for $33.25 with interest thereon at the rate of six per cent per annum from January 15, 1917, was made. The Missouri Pacific Railroad, however, declined to pay on the ground 'that the attorneys generally of western lines believe section 206 (f) of the Transportation Act, 1920, is unconstitutional.'

"Counsel for several of the western carriers have taken the same position. We have in our files copy of a letter written on July 17, 1920, by Charles C. Huff, General Solicitor, The Missouri, Kansas and Texas Railway, of Texas, to W. L. Saling, Auditor of Freight Receipts, at Dallas, Texas, which reads as follows:

> We have now reached the conclusion that subdivision (f) of section 206 of the Transportation Act, 1920, should be considered invalid because in violation of the Fifth Amendment to the Constitution of the United States. You, therefore, will please disregard it in determining whether overcharge claims are barred. All such claims should be considered barred where more than two years have elapsed since the delivery of the shipment or the tender thereof for delivery, unless before the expiration of the two-year period, suit was instituted on the claim, an intervention thereon was filed in the receivership case or a claim for reparation based thereon was filed with the Interstate Commerce Commission.

"In view of the interest a considerable number of our members have in this subject, we have procured an opinion from our General Counsel, Mr. Luther M. Walter, which is given below.

"We should like to hear from all members, who have claims which are held up on account of the question raised by counsel for the carriers.

"If any members have claims arising out of shipments which moved prior to federal control, we respectfully suggest the advisability of filing complaints with the Interstate Commerce Commission at once."

Following is the opinion of Mr. Walter in re constitutionality of sections 424 and 206 sub-division (f) of the Transportation Act, 1920:

"Complying with your request for my views on the interpretation and constitutionality of Section 424 of the Transportation Act, 1920 (paragraph 3, Section 16, Interstate Commerce Act) and paragraph (f), Section 206, of the Transportation Act, 1920.

"I do not believe that Section 424 of the Transportation Act (paragraph 3, Section 16, of the Interstate Commerce Act) applies to straight overcharge claims.

"The revelant portion of that paragraph and section reads:

> All complaints for the recovery of damages shall be filed with the Commission within two years from the time the cause of action accrues, and not after.

"The suit to recover an overcharge demands no prior finding by the Interstate Commerce Commission. The published tariff governs in all cases, and the shipper is entitled in the first instance to bring suit in the state or federal courts and recover by way of the damages, the difference between the rate paid and the rate legally published. Black vs. Sou. Pac. Co., 88 Oregon, 533, 171 Pac., 878; Wilson vs. Long Island R. R. Co., 165 N. Y. S., 913, Barrett vs. Gable Bros., Inc., 226 Fed., 628; National Elevator Co. vs. C. M. & St. P. Ry. Co., 246 Fed. 588.

"The section above quoted specifically refers only to proceedings before the Commission and not to suits in court. Since any shipper can sue in court in the first instance for an overcharge, there is no justification for giving the section as applied to an overcharge claim the broad interpretation given it by the Supreme Court in Phillips vs. Grand Trunk Ry., 236 U. S., 662, in which in the case of suits for reparation on account of an unreasonable rate, the court, to prevent the very discrimination which the Act sought to avoid, found it necessary to interpret the limitation to apply to suits in court, otherwise a shipper who awaited the decision of the Commission and then sued in court for his reparation would be given greater rights than that shipper who, attacking the rate in the first instance, necessarily had to apply to the Commission.

"In the present case, however, it not being necessary in the first instance for any shipper to apply to the Commission, all shippers are given the same right in a proceeding in court under the various state statutes of limitation, and there is no necessity for departing from the plain reading of the statute which is that it applies only to proceedings brought before the Commission.

"Dealing now with the question of whether or not Section 206 of the Transportation Act—which excludes the period of federal control from the periods of limitation in actions against carriers, or in claims of reparation made to the Commission for cause of action arising prior to federal control—it is my view that the section is constitutional.

"As applied to suits for loss and damage the limitation on suits against carriers is found not in the statute law, but in the bill of lading. To exclude the period of federal control from the contract limitation of two years and one day period is not unconstitutional as impairing the obligation of contract, since that clause of the constitution specifically applies only to the several states and not to the federal government.

"Nor is it unconstitutional as in violation of the 5th amendment of the constitution (due process of law clause). The right of a carrier to offer as his defense that a certain period of time has elapsed, is no greater when the period of limitation is by contract than when the period of limitation is one of statute.

"The question is controlled by Campbell vs. Holt, 115 U. S., 620; 29 L. ed., 483, which holds that in the case of an ordinary suit not involving a question of title, a repeal of a statute of limitation, even after a debt has been barred, does not deprive the debtor in whose favor it had become a defense of this property without due process of law, and holds that the creditor after such a repeal is then entitled to bring suit.

"It may be said that the great weight of authority in the state courts is opposed to the doctrine of Campbell vs. Holt, as it has been followed only in Montana, New Mexico, New York, Texas and West Virginia.

"However, in cases arising under any of the commerce acts, the interpretation of the law as given by the federal courts is supreme and controlling upon the state courts. (Barslow vs. N. Y., N. H. & H. R. R. Co., 143 N. Y. Supp., 983.)

"It cannot be contended that the bill of lading provision goes not only to the remedy but destroys the liability, for the Commission has ruled in the Decker case (Jacob E. Decker & Sons vs. Director-General et al., 55 I. C. C., 453) that under the law and the bill of lading, payments on valid claims could be made even after the elapse of two years, which can only mean that the liability is not destroyed, otherwise such payments would be rebates and unlawful.

"When we come to consider the situation in respect to proceedings before the Commission, the question is not substantially different. Here, however, we have a statutory rather than a contract limitation, which provides that all complaints for the recovery of damages shall be filed with the Commission within two years from the time the cause of action accrues and not after.

"It may be the contention of the carriers that since the Supreme Court in the case of Phillips vs. Grand Trunk Ry., 236 U. S., 662, interpreted that statute, as applied to the facts there before it, to mean that the lapse of time not only barred the remedy but destroyed the liability, that any extension of the period of limitation would be an attempt to revive the obligation of the carrier and would be taking the carriers' property without due process of law.

"Such a contention, if made, is fallacious from several standpoints. In the first place, the extension of the limitation period does not take from the carrier anything that by right belonged to it. During the period over which the Transportation Act extended the period of limitation, Sections 1, 2, and 3 of the Act were in full force and effect, declaring unlawful rates and charges which were unreasonable, also discriminatory and unduly prejudicial. The collection of such unlawful charges to which the carrier had no right—being unlawful under the provisions of the Act in force at the time of the collection—gives the carrier no right to the retention of such charges. Having committed the wrong, they must hold such money always subject to the power of Congress in its regulation of commerce, to confer upon the shipper a remedy by which the shipper may recover it. The situation here, therefore, is not that of imposing an obligation to pay damages for an act which was lawful when performed, but is rather conferring upon the shipper a remedy by which money may be recovered from the carrier, which when collected was collected unlawfully, and contrary to the express provisions of law.

"Even if we consider that the extension of the limitation period is imposing new liabilities upon the carriers, the law comes well within the constitutional powers of Congress in its regulation of commerce.

"In Louisville & Nashville R. R. Co. vs. Mottley, 219 U. S., 467; 55 L. ed. 297, the L. & N. in consideration of a release of claim for damages had agreed to give Mottley and his family free transportation over its line for life. This contract was en-

tered into some years prior to the amendment of the Act to Regulate Commerce in 1906, and for many years the L. & N. accorded Mottley such free transportation in accordance with the contract. With the amendment of the Act, in 1906, it was provided that it was no longer legal for a carrier to accept anything else than money in payment of its charges. On the L. & N.'s refusal to honor Mottley's pass, he brought suit and the case came to the United States Supreme Court. Mottley relied on the due process of the law clause, but the court held that the agreement of the carrier with Mottley became void upon the amendment of the Act, the court saying:

> The agreement between the railroad company and Mottley must necessarily be regarded as having been made subject to the possibility that at some future time Congress might so exert its whole constitutional power in regulating interstate commerce as to render that agreement unenforcible or to impair its value.

"If under the power to regulate commerce, Congress can destroy and render void a contract right of one of the public, and can release the carrier from obligations which were valid when assumed, the same power gives Congress the right to impose whatever additional obligations on the carrier accrue under an extension of the Statute of Limitations.

"Finally the extension of the period of limitation is constitutionally justified under the war power. By the federal control act the President was given extraordinary power over the carriers, which, except for the war power of Congress, would have been held unconstitutional. Northern Pacific Ry. Co. vs. North Dakota, 250 U. S. 135; 63 L. ed., 897. While we were still at war, and in order to complete the purpose for which the railroads were taken over and to wind up the affairs of the Railroad Administration, the Transportation Act, 1920, was passed, returning the carriers to private control. In the opinion of Congress in order to restore to the public some of the rights of which they had been deprived during federal control, and in order to place the parties in the same relative position as before federal control, it was thought necessary to extend the period of limitation.

"As one of the incidental provisions of the Transportation Act necessary to complete a work undertaken by virtue of the war power, such provision is constitutional."

## BRIBERY INVESTIGATION

*The Traffic World Washington Bureau*

Denying that he had said "there are indications of collusion even in the clerical force of the officers of the Interstate Commerce Commission itself," Gibbs L. Baker, a Washington attorney who is general counsel for the Wholesale Coal Trade Association of New York, declared before Commissioner Aitchison, December 4, at a hearing on bribery charges in connection with the supply of coal cars, that "the statement attributed to me is not only startling but it makes me very angry."

The hearing was the first held under the order entered by the Commission under date of November 3 providing for an investigation of reports involving bribery of railroad employes to obtain "unreasonable preferences and advantages" in connection with the distribution of coal cars. Mr. Baker, who was quoted in Washington and New York newspapers recently as saying that coal car distributors had obtained as high as $1,500 a week in bribes, was the only witness subpoenaed to appear. He disclaimed knowledge of the newspaper interviews and denied making the statements attributed to him.

Questioned by P. J. Farrell, chief counsel of the Commission, Baker said he had stated to newspaper men in West Virginia that there were "certain irregularities" with respect to the coal car supply, but he said he himself knew nothing about the matter of rating or distribution of cars and that "the interview doesn't quote anything I said." The interview referred to was one in the New York Herald, in which Baker was quoted at length. This was the interview in which he was quoted as saying that there were indications of collusion even on the part of Commission employes.

"I desire to state that I have no reason to believe that any officer or employe of the Interstate Commerce Commission had anything to do with the supply of cars," said Baker.

Commissioner Aitchison said he desired to know how any employe of the Commission could have anything to do with the placing of cars.

"I don't know how any officer or employe of the Interstate Commerce Commission could add to or take from the supply of cars to mines," said Commissioner Aitchison.

Although he denied making the statements attributed to him in the interviews referred to, Baker said he had talked with newspaper men and that whatever he had said was simply to call attention to the fact that there were irregularities in the matter of coal car supply.

What knowledge he did have on the subject, he said, "was a matter of hearsay." He said some of the information he had was obtained at a hearing in New York before the Tidewater Coal Exchange and that the same information was in the possession of the district attorney's office of New York and of J. C. Fort, chief of the bureau of inquiry of the Commission.

Asked if he had any information at all on the subject of bribery, Baker, saying he wished "to be perfectly frank with the Commission," referred to a conversation which he said he had had with William F. Coale, of Cumberland, Md., and New York, and in which he said Coale told him that the American Fuel and Shipping Company of New York and Baltimore had obtained a permit for the shipment of about 100,000 tons of coal from points on the B. & O. to tidewater by representing that ships were ready to take the coal when delivered at tidewater, there being an embargo against the movement of coal under any other conditions on the B. & O. To get the permit, according to the story related by the witness, $4,000 changed hands, and the names of ships were "faked" or were not in port at all. The permit was issued by the B. & O. Baker said, on the strength of that statement by Coale he had "doubtless said to some newspaper men that there were abuses" in the matter of car supply.

Baker also said he had heard that "W. H. Bradford & Co." of New York had "overshipped" on their permits and that "Davis & Co." of Baltimore had shipped coal on permits issued to the "Henley Company" of Baltimore.

Commissioner Aitchison, at the conclusion of the examination of Baker, said the hearing would be adjourned until further order of the Commission.

## RAILROAD LEGISLATION

*The Traffic World Washington Bureau*

Senator Cummins and Representative Esch, chairman of the House committee on interstate and foreign commerce, introduced identical bills December 7 for the purpose of extending the effective date of section 10 of the Clayton anti-trust act from January 1, 1921, to January 1, 1922. The section prohibits intercorporate dealings by officers of railroad companies with other companies in which they are interested. Section 501 of the transportation act extended the effective date to January 1, 1921. The Senate committee, December 9, favorably reported the bill.

Neither the Senate or House committee on interstate commerce have any hearings on transportation matters in sight. Mr. Esch said there was nothing before the committee at this time that was likely to be taken up soon. Senator Cummins plans to hold hearings on the bill repealing that part of the valuation section of the act to regulate commerce which requires the Commission to report the cost of reproduction of carriers' lands, but there is nothing definite as to when these hearings will be held. The bill, no doubt, will be opposed by the railroads, because of their action in forcing the Commission to obey that part of the law through the decision of the Supreme Court in the Kansas City Southern case. An identical bill on the valuation question, introduced by Mr. Esch, is pending before his committee, but he has made no arrangements for hearings thereon.

Senator Pittman, of Nevada, introduced in the Senate, December 7, a bill (S. 4524) which would amend the fourth section of the act to regulate commerce so as to prohibit departures from the section. The bill is similar to others which have been introduced heretofore by senators and congressmen from the intermountain territory designed to make rigid in application the provision that a carrier shall not charge less for a longer than a shorter haul.

Enactment at the present session of Congress of S. 1024, with suggested amendments, which was introduced in the Senate May 29, 1919, by Senator Cummins, is being urged by the railway committee of the New York Board of Trade and Transportation. The bill, which is pending before the Senate committee on interstate commerce, provides penalties for bribery and makes unlawful the giving of bribes by persons, corporations, etc., to employes, or the acceptance thereof by the employes. The amendment suggested is contained in a bill (S. 4603) introduced by Senator Fletcher and would provide immunity for any person guilty of giving or accepting a bribe who confesses to any United States district attorney. The railway committee of the New York Board of Trade and Transportation believes enactment of the Cummins bill into law will aid in breaking up the bribing of railroad employes by shippers. The committee, through E. J. Tarof, chairman, submitted the following resolution on the subject to the association:

> Whereas, It has been publicly stated in documents issued by the Pennsylvania Railroad Company that some shippers are paying bribes or giving inducements to railroad employes for the purpose of obtaining more than their pro rata allotment of freight cars, and that, while the bituminous coal regions of Pennsylvania have furnished a majority of the cases hitherto uncovered, the regrettable practice has extended to other lines of production. Therefore,
>
> Resolved, That the New York Board of Trade and Transportation unqualifiedly denounces such practices as vicious and extremely detrimental to the public interest. In our opinion they call for prompt and effective measures forbidding and suitably punishing them.
>
> Resolved, That the Cummins bill, S. 1024, amended as proposed in the foregoing report, should be passed without delay, and we respectfully petition the Congress to enact the said bill at the coming session.
>
> Resolved, That the officers and railway committee of this board be requested to take such steps as they may deem to be proper to carry out the purpose of the foregoing resolution.

# The Open Forum

**A Department for the Discussion by Readers of THE TRAFFIC WORLD of Transportation Questions of Interest to Traffic Men**

## TRACING SMALL FREIGHT SHIPMENTS

Editor The Traffic World:

It is fair to assume that practically every industrial and mercantile concern in the country has experienced at one time or another numerous and exasperating delays in small freight shipments. Probably the most exasperating feature of these delays has been the lack of satisfactory service on the part of the railroad companies in tracing these delayed shipments for the shipper.

Why this failure on the part of the railroads to render satisfactory service?

In order to answer this question we must look into the methods used by the railroads in handling such shipments. All freight delivered to the railroad for shipment is subject to a contract that is binding upon the carrier and the shipper. This contract, which is commonly termed a bill of lading, is issued in duplicate and must be signed by the railroad and the shipper. The duplicate is called the shipping order and is retained by the railroad.

As soon as a shipment is received from the shipper and bill of lading is issued it is loaded in freight car. The initial and number of the car are placed on the shipping order, which is then sent to the waybill desk, where correct rate is given and a waybill or manifest issued which contains the following information relative to the shipment: Waybill number and date, forwarding station, destination, route, car initials and number, shipper's name, consignee's name, number of packages, kind of articles, weight and freight charges. This document travels with the shipment to its destination.

The agent at the originating station sends the car containing this and other shipments to a transfer station. He either mails the waybills ahead on passenger train or forwards them in car containing the shipment, issuing a card waybill or manifest showing full information to carry car to where it is "carded," as it is termed. Upon arrival at such transfer point shipments are checked from car and "transferred," with other freight moving in the same direction, to cars which are "carded" to the next transfer station, waybills being forwarded with car or mailed ahead on passenger trains. Shipments may be handled at from one to a dozen transfer points, depending upon the distance and direction traveled.

Formerly a book record of these shipments was kept at each transfer, but this was generally abolished several years ago, so that it is now impossible for transfer stations to tell whether any particular shipment has been handled or not. The moment shipments leave originating station all record of their movement is lost. The railroads, recognizing this fact, have adopted a standard tracer form with uniform rules instructing that tracer must not be issued until sufficient time has elapsed for shipment to arrive at destination and that such tracer must be mailed to the agent at destination, who will advise as to delivery. It is plainly evident that this action cannot expedite movements of freight.

Tracing the railroads with endeavor to hurry delivery of small freight shipments is just as reasonable under this system as would be tracing the Post Office Department with a view of expediting the delivery of drop letters of which the post office has no record—and just about as useful. Criticizing the postmaster or letter carrier for failure to furnish definite advice as to whereabouts of such letters is equally as reasonable as criticizing railroad employes for not giving exact information with regard to the movement of less-than-carload (L. C. L.) freight shipments under the present system.

What is the use of tracing L. C. L. shipments under the present methods of handling such shipments by the railroads? Absolutely none.

Something should be done at once to bring this matter to an issue. In view of the fact that the railroads are not giving reasonable service in tracing L. C. L. freight, they should be instructed by the Interstate Commerce Commission to adjust their methods at once and to keep such records as will enable them to render to shippers and receivers of freight this needed and reasonable service. The Interstate Commerce Commission, if necessary, should provide such rules and regulations covering L. C. L. freight shipments as will protect interests of both shippers and railroads.

Do you believe that the railroads should keep such records of less-than-carload freight movements and should trace them in such a manner as will make it possible to locate and hurry forward delayed shipments? If you do, we suggest that you write to the Interstate Commerce Commission, Washington, D. C., requesting them to instruct the railroads accordingly.

If you desire extra copies of this pamphlet for reference to the Commission, so as to avoid lengthy explanations, the same will be gladly furnished on request to the Traffic Department, Elmira Chamber of Commerce, Elmira, N. Y.

J. C. Field, Mgr. Traffic Dept.

Elmira, N. Y., Nov. 15, 1920.

## ADDRESSES ON EXPRESS SHIPMENTS

We are endeavoring in our campaign for "Better Service" to expedite the delivery of express shipments, and in this connection we have found that a great many shippers fail to show the street address of the consignee on the shipments.

If agreeable, will you please insert in the next number of The Traffic World an item suggesting that shippers of express, to expedite delivery, show on all shipments in addition to the consignee's name and town, the street and number?

I am sure this will result in better service for all shippers.

E. S. Buckmaster,
Assistant General Agent, American Railway Express Co.

Chicago, Dec. 7, 1920.

## THE INDUSTRIAL TRAFFIC MAN

Editor The Traffic World:

I have noted with interest the various articles and comments printed under "The Industrial Traffic Man" and, being an ex-railroad man of twelve years' experience, I cannot help but express approval of E. A. Brown's comment on the articles written by W. K. Webber and J. O. Richards.

In the building up of the practical traffic man, in my opinion, there is very little chance of a man attaining any great success in the transportation world without a few years, at least, of railroad experience. In my own experience I have met and dealt with traffic men who were always ready to boast of their diplomas from different traffic schools, but when it came to railroading they readily showed a lack of experience in the game itself. It may be true, and we will grant to Mr. Webber, that there is a certain amount of red tap connected with the railroad game, but as to being narrow, I should consider that Mr. Webber is, to say the least, radical in his assertion.

I do not wish to cause any ill-feeling by taking the stand I have in regard to this matter, as I believe the old saying, "You don't know how much you have to known, to know how little you know," applies to us all.

Mohawk Valley Cap Factory,
E. T. Foxenberg, Manager of Transportation.

Utica, N. Y., Dec. 6, 1920.

## FOURTH SECTION REPARATION

Editor The Traffic World:

The writer noted with a great deal of interest article appearing in the last (?) issue of your valuable publication, relative to fourth section violation without reparation. We have always been of the opinion that, in order to secure reparation for fourth section violation, it was necessary for us only to present the facts to the interested carriers and the Interstate Commerce Commission in the form of a claim. Very much to our surprise, however, we are informed by the secretary of the Interstate Commerce Commission that it is necessary for us to prove that we are materially damaged by this fourth section violation.

The fact that we are filing claim for overcharge would appear to us to be sufficient evidence that we are damaged. The particular instance that we have in mind only amounts to a few dollars, and it is not likely that we will ever have the occasion to use rates we have in mind. Yet it appears to us that it is, indeed, a cruel state of affairs that would force us to go to the expense and trouble of presenting a formal complaint in order to secure a few dollars, and at the same time cause us the inconvenience of having to appear personally before the Commission.

We merely wish to state that it appears to us that the Commission is furnishing a very broad loophole for the carriers to escape penalty of these violations. With a little more assistance

of this kind and the exorbitant freight rates that we are now paying, the railroads of this country should certainly "get well."

We would like to hear from other interested firms their views on this same subject.

Scott-Mayer Company,
G. W. Seldsee, Traffic Manager.

Little Rock, Ark., December 3, 1920.

## RAILROAD EXCURSION FARES

Editor The Traffic World:

In your number of November 20 Traffic Manager E. H. Walker of the Reno Chamber of Commerce writes on "Excursion Fares Wanted," the immediate occasion for this communication being the refusal of the railroads in Nevada to grant reduced rates for movement of the University of Nevada football team and its friends (200 ?) to Berkeley, Cal., and return.

Mr. Walker is writing from the standpoint of the public, and, perhaps in this particular case, from the standpoint of only a small part of the public, therefore, the position of the railroads should be stated.

Mr. Walker asserts that the withholding of special excursion fares is destroying public confidence in the railroads.

Railroads in the West, generally speaking, are making today excursion fares or reduced rates for conventions, state and county fairs, summer tourist fares to established resorts, and for picnics, such as Sunday school excursions, but they are declining to make excursion fares where the business to be accommodated is problematical and where certainty of its interference with regular business can be easily demonstrated.

In the Esch-Cummins bill there was the thought that, by reason of increased wages made during government operation, also great increase in cost of all material and supplies which took place simultaneously, it was absolutely necessary to authorize increased rates and fares that the railways might provide themselves with additional equipment and betterments necessarily held in abeyance during the war period.

In accordance with the provision of this act the Interstate Commerce Commission authorized substantial increases in freight and passenger fares, which increases, however, were refused by the Nevada Railroad Commission as to the business within the state of Nevada.

Responsive to this necessity for better freight and passenger transportation, and to the increased compensation allowed the railways (Nevada and a few other states excepted), the Southern Pacific has recently added 5,000 train miles per day to its passenger service and also placed large orders for power and equipment, in the hope that the volume of travel may be thereby increased to a point where the continuance of these trains will be fully justified.

In continuing the policy established during government administration with respect to excursion fares, the railroads are attempting to conserve and increase the much needed revenues and there seems little ground for doubting the wisdom of following such policy during period of reconstruction through which the railroads are now passing.

Mr. Walker should recognize that the present policy of the railroads is established with a view of co-operation with the plain intent of the Esch-Cummins bill to give better service to the public as a whole through means afforded by the increased revenue, and not to dissipate such revenue by experiments, even if in a few instances it seems likely to be profitable.

Under the circumstances, any reductions in fares for movement of football, baseball, basket-ball or other similar teams, where the rate must apply alike in all states from Oregon to Louisiana, where conditions are substantially similar, but where it cannot be clearly demonstrated in advance that revenues of the roads will be increased by establishing such practice, cannot at this time be considered a wise measure.

Charles L. Fee,
Passenger Traffic Manager, Southern Pacific Company.

San Francisco, Cal., December 1, 1920.

## THE INDUSTRIAL TRAFFIC MAN

Editor The Traffic World:

I have read with much interest the various articles in the Open Forum regarding the qualifications for a first class industrial traffic manager and the inability of some traffic men to secure a position for the reason that they had no railroad experience.

Some years ago I had occasion to write to about twenty-five large manufacturing concerns with a view to making a connection with some one of them in their traffic department. Replies were received from about half of them and each one of them desired some information as to my railroad experience. I was forced to admit my lack of this seemingly highly prized qualification, with the result that I did not connect with any of them.

Just why this experience is thought necessary I have never been able to figure out. If a railroad man is ambitious and wants to rise, he usually does so via one of several routes, the operating department, traffic department, or the claim or legal department, according to his inclinations. He may become more or less proficient in whatever line he elects to choose, but as a rule he is more or less ignorant of the other branches of the work.

I am acquainted with a railroad man who has been with one road over twenty years and he is no higher now than he was twenty years ago. They say he is a good railroad man in almost any department, and he was for several years rate clerk in one of the road's large agencies, but he cannot properly interpret many items in a classification and does not know the principles on which classification is based. Furthermore, he states that he doesn't care to know. He watches the clock absolutely and wouldn't think of giving his road one minute of his time after quitting time. His allegiance is to his union and not to the road that employs him.

I have a friend who has been in railroad service thirty-five years and is looked upon as one of the road's best men as far as agents go, but he knows nothing of rate structure, classification principles, handling warehouse labor efficiently and many other things that ought to be known by a supposedly first class railroad man.

When you find a railroad employe who is ambitious, anxious to serve his employer and the public and is willing to spend some of his time after office hours studying something that will make him more proficient in his job, and is truly trying to learn all there is to know about his job and a little about the other fellow's, then he would be a safe man to pick for an industrial traffic man's job. He might not know as much as he ought to know, but he is going to find out if he lives long enough. It is unfortunate that we find so few like the above in railroad service.

A first class traffic man ought to be able to direct warehouse labor efficiently, handle teams and trucks with a view to the smallest amount of lost motion and lowest cost of operation, figure freight rates and know how to find out whether or not they are reasonable; he should know the principles of rate making, the principles of freight classification, why a certain commodity may take a higher rate in one direction than the reverse direction between the same points. He ought to be able to file his loss and damage claims justly and with due regard for the carrier's liability, and then he should insist on their payment and be able to back up his insistence with legal reasons as to why payment should be made, and be able to cite court rulings in substantiation thereof. If he has a complaint to file with a State or Federal Commission, he should by all means be able to get up the complaint in proper form and be able to present it and handle it to a conclusion, getting up his charts, exhibits, etc., without the aid of an outside attorney. I say that he should be able to do all this, not that he should do it himself. Naturally in a big organization his job is to direct and know whether those under him are handling the work as it should be.

Whenever I read of a case before the Interstate Commerce Commission and see the name of some well known traffic lawyer mentioned as representing the complainant, I say to myself that the traffic manager of that concern is probably an old railroad man and the firm was compelled to call in an outside traffic man to present and handle their complaint for them on account of their regular man not having the ability to do it.

A man who wants to know, can learn more in a year from some one of the good extension schools teaching traffic, than the usual run of railroad men learn in a lifetime by experience alone.

The man who is a student until he dies, systematically studying his job and reading everything he can get his hands on pertaining to his line of work, has the call every time over the fellow who does not, and will win out eventually over his less studious competitor. Truly, knowledge is power, no matter what profession one elects for his life work, and I am convinced that education is the remedy for the majority of ills of the world.

W. H. Colson.

Jacksonville, Fla., Dec. 1, 1920.

### C. C. & O. BONDS

Application has been made to the Commission by the Carolina, Clinchfield & Ohio Railway for authority to issue $5,000,000 of fifteen-year 6 per cent cumulative income debentures dated July 1, 1920, out of a total authorized issue of $6,000,000 of said debentures. The debentures are to be sold at par and the proceeds applied to the payment of short time notes and acceptances of the applicant in the amount of $4,124,000, and such other current indebtedness as may be met by the remainder of the proceeds, the applicant states. The payment of the indebtedness referred to was made as a condition in a recent order of the Commission authorizing a loan of $2,000,000 to the applicant, and the same condition was contained in a later order approving an additional loan of $1,000,000 to the applicant.

# Miscellaneous Decisions

**Traffic Cases Recently Decided by State and Federal Courts**

(Digests taken from Reporters and Digests of National Reporter System, published by West Publishing Co., St. Paul, Minn. Copyright by West Publishing Co.)

### REGULATION OF COMMON CARRIERS

**Telegraphs and Telephones—Punitive Damages:**

(Supreme Court of Mississippi, Division A.) Under Act Cong. June 18, 1910, c. 309 (36 Stat. 539), and the common law as accepted and enforced by the federal courts, a telegraph company is not liable for punitive damages for delay in the transmission of an interstate telegram, resulting from the wilful disregard of the sender's rights on the part of the company's agent, unless the agent's wrongful act was authorized or approved by the company.—Western Union Tel. Co. vs. Thompson, 86 Sou. Rept. 273.

**Telegraphs and Telephones—Limitation of Liability**

Under Act Cong. June 18, 1910, c. 309 (36 Stat. 539), a telegraph company is not liable for delay in the transmission of an interstate telegram, for an amount in excess of the price of the message, where the contract between the sender and the company, approved by the Interstate Commerce Commission, so provides.—Ibid.

**Fines and Penalties:**

(Supreme Court of Nebraska.) Sections 6159, 6160, 6162, Rev. St. 1913, which imposes on railroad companies, for delay in shipment and delivery of goods carried, a liability in favor of the shipper for a specified sum in addition to all actual damages suffered by reason of such delay, are unconstitutional under section 5, art. 8, of the Constitution, which provides that all fines and penalties, arising under the general laws, shall go exclusively to the school fund.—Sunderland Bros. Co. vs. Chicago, B. & Q. R. Co., 179 N. E. Rept. 546.

The case of Clearwater Bank vs. Kurkonski, 45 Neb 1, 63 N. W. 133, discussed and criticized.—Ibid.

In determining whether a provision to pay a stipulated sum in case of default is a penalty or liquidated damages, the court will consider the subject matter, the language employed, and the intention of the parties; and, if the construction is doubtful, the agreement will be construed as a penalty, and, if resulting damage is certain, or can be ascertained by evidence, it is a "penalty," but where the damages are not susceptible of measurement by pecuniary standard, a stipulated sum will be regarded as "liquidated damages."—Ibid.

The purpose of liquidated damages is to furnish compensation for an injury sustained, and if the amount provided does not bear a reasonable relation to the damage which might be contemplated by the parties, or if it was intended to more than cover that damage and is not compensated merely, it will be construed as a penalty.—Ibid.

**Construction of Spur Track:**

(Supreme Court of Wisconsin.) A railroad that has constructed a spur track for an industry cannot, under Laws 1907, c. 352, as amended by Laws 1909, c. 481 (St. 1919, 1797-11m), maintain an action to recover the cost thereof without first having the railroad commission determine the same in separate items.—Chicago & N. W. Ry. Co. vs. Wisconsin Zinc Co. et al., 179 N. W. Rept. 588.

The determination of the cost of a spur track under St. 1919, 1797-11m, is the determination of a pure question of fact that may be delegated to the railroad commission, and its action thereon involves no judicial or legislative function.—Ibid.

Review of an order of the railroad commission determining the legitimate cost of a spur track under St. 1919, 1797-11m, may be had under the provisions of section 1797-16, being an order fixing a charge for a service rendered by the railroad.—Ibid.

**Taxation:**

(Supreme Court of Missouri, in Banc.) Tax commission, by using the full value of a railroad's Missouri assets, which were all used both in intrastate and interstate commerce, in determining the amount of the railroad's franchise tax, under franchise tax act of 1917, did not violate federal Const. art. 1, 8, by laying a tax on interstate commerce, nor the fourteenth amendment to the federal Constitution.—State ex rel. Wabash Ry. Co. vs. Williams et al., 224 S. W. Rept. 822.

**Indictment Against Road Under Federal Control:**

(Court of Appeals of Kentucky.) A railroad company whose property is under federal control is not subject to indictment for violating Ky. St. 772, in regard to maintenance of waiting rooms, where the acts charged arose during the period of such control, and were beyond the control of defendant, in view of General Order No. 50 of the Director-General of Railroads (U. S. Comp. St. 1918, U. S. Comp. St. Ann. Supp. 1919, 3115¾j, 3115¾l).—Commonwealth vs. Louisville & N. R. Co., 224 S. W. Rept 847.

**Injunction Against State Commission:**

(District Court, W. D., Missouri, C. D.) An uncontradicted showing that an interurban railway was losing money, though it was charging a higher rate, in its interstate traffic and traffic in another state than was permitted by a state public service commission's order, is sufficient, in the absence of a satisfactory explanation why the business within that state should be more profitable than the other business, to authorize a temporary injunction against the enforcement of the order prescribing the rate.—Joplin & P. Ry. Co. vs. Public Service Commission of Missouri et al., 267 Fed. Rept. 584.

A temporary injunction may be issued to maintain the status quo pending a final hearing, where the questions of law and fact are intricate and difficult and where the rights of all parties can be easily safeguarded if the injunction is wrongfully issued, while the injury to complainant would be irreparable if the injunction were wrongfully denied.—Ibid.

# Loss and Damage Decisions

**Cases Recently Decided by State and Federal Courts**

(Digests taken from Reporters and Digests of National Reporter System, published by West Publishing Co., St. Paul, Minn. Copyright by West Publishing Co.)

### LOSS OF OR INJURY TO GOODS

**Form of Action:**

(Supreme Court of Oregon.) On failure of a baggage transfer company to deliver her trunk of which it had possession as bailee, the owner had an election of remedies, having been entitled to sue on the theory the action should be treated as in assumpsit for breach of contract, or as an action in case for negligence, or, if there had been a conversion of the goods, as an action in trover for the conversion.—Hamilton vs. Baggage & Omnibus Transfer Co., 192 Pac. Rept. 1058.

Where plaintiff owner of a trunk not delivered tried her case against defendant transfer company on the theory the action was in assumpsit, and defendant transfer company did not ask that plaintiff be required to declare her election between trover and assumpsit, it cannot claim on its appeal that the action must be treated as one in trover rather than in assumpsit.—Ibid.

**Burden of Proof:**

The burden of proof as to negligence was on plaintiff owner of a trunk suing defendant transfer company, as bailee, for its loss and consequent failure to deliver.—Ibid.

**Pleading:**

Amended complaint of owner of trunk not delivered against transfer company for the loss, though vulnerable to motion or demurrer as embracing allegations sufficient to sustain an action in trover, while intended to be brought on the theory of assumpsit, held sufficient after judgment to support the judgment rendered on the theory the action was in assumpsit.—Ibid.

**Liability of Carrier:**

Whether plaintiff's trunk was stolen from, misdelivered, or otherwise lost by defendant transfer company, bailee, the company is liable in an action in the nature of assumpsit if the loss was caused by its negligence.—Ibid.

Bailor of trunk with transfer company held not as a matter of law bound by the unknown terms in fine print on a small pasteboard check reasonably understood by her to be a mere voucher or token for identification of the trunk, and accepted as such by her without objection.—Ibid.

**What Constitutes Baggage Mixed Question Law and Fact:**

The question as to whether a given article of property, both as to quantity and as to value is baggage is necessarily one of mixed law and fact, to be determined by the trier or triers of the facts, under proper instruction, subject to the power of the court to correct abuse.—Ibid.

Articles carried by plaintiff in trunk lost in possession of defendant transfer company, consisting of a basket, needles, opera glasses, thrift stamps, linens, photographs, etc., cannot be held not baggage as matter of law.—Ibid.

### DELAY IN TRANSPORTATION OR DELIVERY

**Damages:**

(Supreme Court of Nebraska.) Sections 6159, 6160, 6162, Rev. St. 1913, which impose on railroad companies, for delay in shipment and delivery of goods carried a liability in favor of the shipper for a specified sum in addition to all actual damages suffered by reason of such delay, are unconstitutional under section 5, art. 8, of the Constitution, which provides that all fines and penalties, arising under the general laws, shall go

exclusively to the school fund—Sunderland Bros. Co. vs. Chicago, B. & Q. R. Co., 179 N. W. Rept. 546.

The case of Clearwater Bank vs. Kurkonski, 45 Neb. 1, 63 N. W. 133, discussed and criticized.—Ibid.

In determining whether a provision to pay a stipulated sum in case of default is a penalty or liquidated damages, the court will consider the subject matter, the language employed, and the intention of the parties; and, if the construction is doubtful, the agreement will be construed as a penalty, and if resulting damage is certain, or can be ascertained by evidence, it is a "penalty," but where the damages are not susceptible of measurement by pecuniary standard, a stipulated sum will be regarded as "liquidated damages."—Ibid.

The purpose of liquidated damages is to furnish compensation for an injury sustained, and if the amount provided does not bear a reasonable relation to the damage which might be contemplated by the parties, or if it was intended to more than cover that damage, and is not compensatory merely, it will be construed as a penalty.—Ibid.

## COMPENSATION FOR SHORT LINES

*The Traffic World Washington Bureau*

A decision that is expected to have a profound effect on the controversy between the Railroad Administration and the short line railroads has been handed down by division 4, of the Commission, composed of Meyer, Daniels, Eastman and Potter, in Finance Docket No. 60, in re the application of the St. Joseph Belt Railway for reimbursement under Section 204 of the transportation act. Under that section the government must make good at least the operating deficit (if not more) of a railroad corporation the property of which was taken under federal control but which "operated its own railroad or system of transportation."

The prayer of the belt road was for a certificate under Section 204 for the period during which the road was under control but during which the railroad corporation "operated its own railroad or system of transportation."

That prayer was denied. The Commission refused to make any distinction between roads taken over, saying that "classifying some as federally operated and others as privately operated would meet great difficulties. A more practical view is to regard the taking over of the roads by the President, the appointment of the Director-General, the assumption of authority by him and his representatives, as supplying the necessary elements to constitute federal operation as well as federal control. In the case of the St. Joseph Belt, as we have seen, the Director-General exercised control in the most important matters affecting the income of the carrier. In at least one important instance the action taken was not only without the consent of the owners, but was against their desire."

The specific finding in this case is that the "St. Joseph Belt was not under private operation within the meaning of Section 204 at any time during the period from January 1, 1918, to March 25, 1919." Another specific finding was that none of the processes for the relinquishment of a road was employed in connection with the belt road. That part of the decision was made necessary by the fact that on March 25, 1919, the regional director notified the belt road that it was not being operated by the Railroad Administration.

On that point the Commission held that the operation of the road after March 25, 1919, "was in legal effect operation by the government."

The effect of the decision, while it is, in terms, against the belt road, is believed to be in its favor. The belt road is not entitled to the benefits of Section 204, but, inasmuch as it was taken over and operated by the government, in legal effect, during the whole period of federal control, it must seek financial relief under the sections relating to compensation. Thus far the Railroad Administration has not paid the road a cent. It has even declined to negotiate with a view to the making of a compensation contract, so that, unless the Railroad Administration enters into a compensation contract, the road must ask for compensation referees with a view to going into the court of claims.

## JONES ON SHIPPING ACT

*The Traffic World Washington Bureau*

Charging that the American merchant marine has had no opportunity to make a success under the new merchant marine act, Senator Jones, chairman of the Senate commerce committee, said in a statement issued by him that March 4 would "see an end of dilatoriness in the carrying out of the provisions of the law."

"The duties devolving upon the members of the Shipping Board are varied and stupendous," said he. "Long ago the membership of the board was reduced by resignations to but two men. The merchant marine act provides for a membership of seven and for a segregation of the work of the board. The naming of the full complement of members by the President and a proper distribution of the work among them would have permitted great constructive strides in the administration of the board's affairs and the upbuilding of our commercial marine. However, June, July, August, September and October came and went without the board memberships being filled. The effect is obvious and deplorable.

"Pointblank refusal was made with regard to the duty imposed by the law on the President in the matter of abrogation of commercial treaties which preclude us from the imposition of discriminating customs duties on imports in American vessels as against foreign vessels.

"Without an adequate membership on the board some of the provisions of the act cannot be carried into effect by any means. We are denied the opportunity to feel the real benefit of the act and our marine interests suffer. Yet in the meantime our competitors are enabled to spread propaganda against the measure and to do all possible to discourage us and to discredit our great merchant marine act.

"The change of administration on March 4 next will see an end of dilatoriness in the carrying out of the provisions of the law. President-elect Harding is keenly attuned to our maritime needs and in hearty sympathy with an American merchant marine. He will use care in the selection of men to fill the Shipping Board memberships when called upon to fill vacancies. He will carry out the solemn direction of the law with reference to treaty abrogations, undoubtedly. He will align himself with policies and measures to promote and give permanency to a commercial fleet in keeping with our important world position."

## REVENUE FALLS SHORT

*The Traffic World Washington Bureau*

One hundred and ninety-seven class I roads had a net income of $88,169,565 in October, an increase of 22.5 per cent in comparison with October a year ago, according to reports made to the Commission. Operating expenses increased 28.8 per cent and operating revenues increased 26.2 per cent in comparison with October, 1919. On this basis the roads will fall short of earning 6 per cent on the value of their property devoted to transportation.

## MISSISSIPPI CLASSIFICATION

*The Traffic World Washington Bureau*

Application was made December 9 by B. F. Martin, speaking for the Attorney-General of Mississippi, for co-operation by the Commission with the Mississippi railroad commission, for abolition of the Mississippi Classification. That was the chief part of Martin's argument against the adoption of the tentative report of the examiner in No. 9332, Memphis Freight Bureau against the Illinois Central. He asked that because adoption of the tentative report would have the effect of abolishing part of Mississippi Classification, thus making, as he suggested, a bad matter still worse, especially if the Commission substituted the Southern for the Mississippi classification. That would make rates in Mississippi higher than rates west of the Mississippi River, a territory of lesser traffic density. Martin said that Mississippi was anxious to co-operate with the federal body so as to have a minimum of confusion. The way for concerted action, he said, had been prepared by the filing of complaints by Mississippi shippers against Mississippi rates and classification.

## PAYMENT OF GUARANTY

*The Traffic World Washington Bureau*

In his reply to the mandamus suit brought in the Supreme Court of the District of Columbia by the Grand Trunk Western Railroad Company to compel him to draw a warrant for $500,000 on a certificate for that amount issued by the Interstate Commerce Commission, David F. Houston, Secretary of the Treasury, December 7, reiterated the ruling of Comptroller Warwick that the transportation act does not authorize partial payments of amounts due under the guaranty provisions but that when a warrent is drawn now it must be for a settlement in full.

The secretary set forth that mandamus will lie only to compel the performance of a clear and imperative duty and that the intent of Congress was apparently against the relief asked. He said no case of a clear and imperative duty had been made out and that the writ prayed for should be refused.

Hearing on the petition and the answer probably will be held about the middle of December.

### PERMISSION TO ABANDON LINE

The Pere Marquette Railway Company has been authorized, under an order by the Commission in Finance Docket No. 28, to abandon 11.47 miles of railroad between Rapid City and Kalkaska in Kalkaska County, Michigan. The Michigan public utilities commission contended at the hearing on the application that the company had to apply to it and obtain permission from it to abandon the line of road, but the federal commission makes no ruling on that contention in the report. The road was built to carry timber, but lumbering operations, the Commission says, have ceased in the territory served by the line.

# Personal Notes

The board of directors of the Cincinnati Grain and Hay Exchange has announced the appointment of B. J. Drummond, Cleveland, Ohio, as manager of the traffic department of that organization. Mr. Drummond has been identified with railroads and large shippers, including the Chicago & Northwestern Railway, Cudahy Packing Company and the Illinois Central Railway, and was chairman of the advisory committee of the traffic managers' committee of the Omaha Chamber of Commerce. In July, 1919, he went to Cleveland, joining the forces of the American Shipbuilding Company. Mr. Drummond was chosen for his new position by the traffic committee, which is composed of E. A. Fitzgerald, C. S. Custer, H. M. Brouse, E. B. Terrill and H. E. Richter.

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J. F. Hennessey, Jr., the newly elected president of the Houston Traffic Club, was born in St. Louis in 1898. He removed to [illegible], Tex., in 1910, entering the service of the M. K. & T. Railway under J. L. West, at that time general freight agent, and served on all desks in the general freight office up to chief clerk. He went to Houston in 1914 as chief clerk to the assistant general freight agent of the same company, and was made contracting agent in 1915, serving [illegible] shortly before the United States entered the war. He entered the first officers' training camp at Leon Springs in May, 1917, was commissioned second lieutenant in September, 1917, and in October, 1918, was promoted to first lieutenant; went overseas with the 90th Division, seeing nearly three months' front line trench action; was made captain after the St. Mihiel drive; was cited and received divisional citation and star for bravery at Stenay; was thrice gassed and shot once. After spending six months in Germany as part of the Army of Occupation and having been in command of sixteen towns, he returned to the U. S. A. in July, 1919, resuming his position with the M. K. & T. at Houston. Shortly afterward he was transferred to Austin as division freight agent. Recently, however, and largely as a result of numerous requests from his Houston friends, he returned to Houston as division freight agent of the Katy, which position he now holds.

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The Norfolk & Western announces the appointment of E. E. Shumate and S. F. Thacker, traveling freight agents, with headquarters at Winston-Salem, N. C.; R. H. Ludlam, commercial agent, Richmond, Va.; W. H. Lincoln, traveling freight agent, Rochester, N. Y.; S. H. Hill, traveling freight agent, Atlanta, Ga.

V. Schaffenburg, recently assistant general freight agent of the Texas & Pacific Railway, has been appointed traffic manager of the Myles Salt Company, Ltd., at New Orleans.

J. D. Hashagen, traffic manager of the American Glue Company, will make an address before the Chamber of Commerce of Plymouth, Mass., December 16.

J. J. Gibson has succeeded W. A. Barlow as traffic manager of the Texas Star Flour Mills, Galveston, Tex.

H. Bierman is appointed general freight claim agent of the Missouri, Kansas & Texas Railway of Texas, and W. H. Geagan is appointed freight claim agent. J. W. Finucane is appointed freight claim agent of the Missouri, Kansas & Texas Railway and the Wichita Falls & Northwestern Railway.

## DOINGS OF THE TRAFFIC CLUBS

The second of the "Get Together Traffic Discussions," held by the Traffic Club of Chicago the evening of December 7, was perhaps even more of a success than the first. Fully 200 members and guests were present. The subject was "claims, with special reference to the McCaull-Dinsmore decision." Those on the program to lead the discussion for the carriers were C. H. Dietrich, freight claim agent, C. M. & St. P. Ry., and J. H. Howard, general claim agent, C. & A. Ry. The leaders for the shippers were G. A. Blair, general traffic manager, Wilson & Co., and chairman of the National Industrial Traffic League's committee on claims; J. A. Brough, traffic manager, Crane Company; and L. F. Berry, traffic manager, Reid, Murdoch & Co. Among the guests were the following well-known railroad men, members of the freight claims section of the American Railway Association, which had been holding a meeting in Chicago that day: H. C. Pribble, A. T. & S. F.; H. C. Howe, C. & N. W.; H. R. Grochau, C. St. P. M. & O.; T. S. Walton, Mo. Pac.; and W. B. Kellett, Ft. Worth & Denver. Messrs. Pribble, Howe and Kellett took part in the discussion. Ralph Merriam and John Burchmore were among the others who took part. They discussed the matter from the point of view of the claim attorney.

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The Traffic Club, Inc., Troy, N. Y., has elected officers as follows: W. J. Cipperly, traffic manager, Cluett, Peabody Company, president; G. T. Russell, traffic manager, Ludlum Steel Company, vice-president; H. A. Zeff, traffic manager, Geo. P. Ide Company, secretary; R. H. Bibb, traffic manager, Ludlow Valve Company, treasurer.

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The Traffic Club of New England will hold its eleventh annual meeting for the election of officers and directors December 16.

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The York Traffic Club, York, Pa., at its meeting December 9, had as speaker J. C. Schmidt, president Schmidt & Ault Paper Company, whose subject was "Co-operation," and Horace W. Cross, Pacific Mail Steamship Company, whose subject was, "Water Transportation to the Pacific Coast." The club has just opened a social room and provided a library of traffic publications.

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The December meeting of the Traffic Club of Newark will be a "Railroad Night." The club will have as guests the general eastern agents and their traveling men, and the members of the Trenton Traffic Club. The speaker will be R. E. M. Cowie, vice-president American Railway Express Company, whose subject will be: "The Express Transportation Problem."

## NEW RATE HELPS BARGE LINE

(From the Gulf Ports Magazine)

Under the new tariffs of increased rates on rail and water lines of the United States the proportion of saving which may be effected by use of the government barge line of the Mississippi River and Warrior River services is immensely increased and shippers availing themselves of water rates or combined rail and water rates secure a tremendous advantage as compared with those not so fortunate.

The equipment of the barge line service has been materially improved by construction which already has been delivered and will be further improved in the very near future by the completion of floating equipment which will be the last word in modern river transportation.

Virtually all of the new Mississippi barges already are in service. These are vessels of 2,000 tons capacity, 31 of them now operating on the river and 9 others nearing completion. At Charleston, W. Va., the Mississippi towboats Natchez and St. Louis have been accepted and are waiting for high water in the Ohio River to float them to the Mississippi. When the contract is complete there will be six of these high-power towboats. These latter vessels will develop 1,800 h. p. and will be capable of moving a tow of 5,000 tons up stream or 10,000 tons down stream. When they are in service the schedule will call for two sailings a week from both New Orleans and St. Louis, five days' down-stream and twelve days' up-stream deliveries.

For the Warrior River service four self-propelled barges, seaworthy for navigation through Mississippi Sound from Mobile to New Orleans, are nearly ready. These vessels will each be able to transport a load consisting of 2,000 tons of coal and 500 tons of merchandise. The first of them is at St. Louis and will be sent to Mobile at an early date.

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# Questions and Answers

In this department will be answered questions of both legal and practical nature that confront persons dealing with traffic. A specialist on interstate commerce law, who is a member of our legal department, will give his opinion in answer to any simple question relating to the law of interstate transportation of freight. A traffic man of long experience and wide knowledge will answer questions relating to practical traffic problems. We do not desire to take the place of the traffic man but to help him in his work. Persons desiring immediate answer by mail or wire or a more elaborate treatment of any question—by the citation of authorities in a legal opinion, for instance—may obtain this kind of private service by the payment of a reasonable fee. The right is reserved to refuse to answer in this department any question, legal or traffic, that it may appear to us unwise to answer or that involves a situation too complex for the kind of investigation herein contemplated.

Address Questions and Answers Department,
**Traffic Service Corporation,** Colorado Building, Washington, D. C.

### Liability of Carrier for Loss of Shipment Moving in Open-Top Cars

Ohio.—Question: We would like to have you advise the liability of the carrier on shipments made on open-top cars. Their classification and bill of lading seems to release them from all liability except for negligence. This, however, is rather indefinite. We ship trucks on open-top cars and carriers are unable to furnish automobile cars, and we always remove all loose and detachable parts and pack same in iron-strapped box, which is secured to car floor. Consolidated Classification, page 408, note 4, described the way automobiles should be packed when shipped on open-top cars, and we would think that if they were so packed the carrier would be liable to the limit. We have had a large number of complaints covering loss of tools, lamps, etc., and in some cases have collected claims. Others have been refused. We would, therefore, appreciate any decisions you might have covering shipments on open cars and also what is understood by the term negligence.

Answer: The Commission, In re Bills of Lading, 52 I. C. C. 761, having under consideration clause 5 of section 1 of the bill of lading, relating to the transportation of freight in open cars said: "We are of the opinion that the exemption stipulated for in the present and proposed bill is too broad and too greatly favors the carrier to be entirely just and reasonable. Moreover, we think it falls within the provisions of the Cummins amendment so far as it seeks to exempt the carrier from the liabilities with which it would be charged under the common law. To that extent it would be invalid and void. To the extent that the carrier would escape liability at common law, stipulation is unnecessary. We shall, therefore, not approve either the rule proposed by the carriers or the substitute offered by the shippers for inclusion among the conditions."

The Commission, in its decision, referred to several cases involving the transportation of goods in open cars, which cases are cited in Hutchinson and Michie on Carriers, but these cases were decided by the courts a number of years ago and prior to the passage of the Cummins amendment to the interstate commerce act, since which time there have been no decisions rendered by the courts, so far as we are aware, which directly passes upon this question. However, in view of the provisions of the Cummins amendment, namely, section 20 of the act to regulate commerce, it is very doubtful, if not certain, that the carrier would not be permitted to place any limitations upon its liabilities for loss or damage, even by contract, as to goods delivered to it for transportation upon open cars. The carrier as to goods delivered to it for transportation is ordinarily an insurer; that is, the carrier is liable for any loss or damage occurring while the goods are in its possession except loss or damage resulting from the act of God, the public enemy, quarantine, the authority of law or the act or default of the shipper or owner.

As to whether when goods are loaded on open cars the carrier is subject to the same liability as where goods are shipped in closed cars or whether the shipper assumes some risk or liability and the carrier is liable only for negligence under the present law is something which has not been definitely settled. We are inclined to believe that the courts would hold that as to articles that ordinarily move in open cars the carrier should be held to a strict liability for loss or damage, but that where the shipper, for his own convenience, arranges to use an open car, the shipper should assume some risk and responsibility and the carrier shall be liable for its negligence only, the burden to prove freedom from negligence to be imposed upon the carrier.

### Liability of Consignee for Freight Charges

New York.—Question: Are we responsible for undercharges covering detention and refrigeration, namely: We were presented by a carrier here with four bills for undercharges, three of which covered detention at Norfolk, Va., and the other, refrigeration charges at Norfolk, Va.

The shipments covering these bills were handled by us on a commission basis, and when the undercharge bills were presented to us we referred the carriers to the shipper for collection, as we had no available funds in hand to honor payment of these undercharges, and it is our opinion that we should not be expected to protect undercharges of this character, when we are not in a position to know whether or not detention charges accrued at point of shipment.

Regarding the bill for refrigeration charges, last May a shipper of ours shipped from Norfolk, Va., a carload of beans, and the original freight bill presented by the carriers did not carry any refrigeration charges. At the time we did not know that the car in question was shipped under refrigeration, and consequently rendered account sales on the basis of transportation charges collected. About two months ago the carriers presented us with a bill amounting to $54.08, covering refrigeration and war tax on this car, and we referred them to the shipper for collection, but it seems that the shipper has not paid any attention to their communication, and they now demand payment of this amount from us, intimating that if we do not pay this bill they will remove us from their credit list. The same conditions apply to the bills for detention. Will you advise if we are liable for the amount of these bills, when these goods did not belong to us, we acting only as selling agents for the consignors?

Answer: Generally speaking, both the consignor and the consignee are responsible for the payment of the lawfully established rate; the former as the party with whom the contract of carriage was made and the latter as the prima facie owner of the goods.

Michie on Carriers, Vol. 2, section 1548, says: "Where a consignee, though a factor only, has full notice of all the facts and obtained the goods under the bill of lading and on the obvious undertaking to pay the freight, and pays on the carrier's requirement at the time of delivery all the freight that the carriers suppose to be due, the consignee is properly held for any balance of freight, as well as demurrage, that may be actually owing according to the terms of the bill of lading."

This was the holding of the court in the case of Gates vs. Ryan et al., 37 Fed. 154, in which case the court said: "The respondents were the New York agents of the shippers, and the consignees and holders of the bill of lading, and after arrival they sold the cargo and directed its delivery. They were interested in it to the extent of their commissions on the sale, and were the persons who were to pay the freight and who, in fact, offered to pay it, without demurrage. Such a consignee, receiving and disposing of the cargo, is liable for both freight and demurrage." However, if the consignee is the agent of the shipper and this fact is known to the carrier, in accordance with the decision of the Massachusetts court in the case of the N. Y. C. & H. R. R. R. vs. York & Whitney Co., the consignee would not be liable for the undercharge.

### Liability of Consignor for Freight Charges

Ohio.—Question: If a shipment billed shipper's order and notify was shipped, say, from Toledo to New York, same sold f. o. b. Pittsburgh, while I understand that in case the railway company cannot collect freight charges from the consignee, that the shippers will be held responsible for same. However, in case the railway company collected all freight charges, but a shipment had been in storage and they failed to collect small amount for storage and unloading, and, then being unable to locate consignee, will you advise if the shippers could be held responsible for such charges?

Answer: Generally speaking, both the consignor and the consignee are responsible for the payment of the lawfully established rate, the former as the party with whom the contract of carriage was made and the latter as the prima facie owner of the goods. A carrier is entitled to its transportation charges either in advance or on delivery of the shipment in good order at destination. In a straight consignment the ownership of the goods is in the consignee immediately after the shipper has delivered it to the carrier for transportation and the consignee as the presumptive owner is the party primarily liable for the charges. If, however, the carrier cannot collect same from the consignee, it may look to the shipper for payment on the ground that the latter is the party with whom the contract of carriage was made. We see no reason for distinguishing the collection of storage charges from the consignor from the collection of freight charges and are of the opinion that the carrier can collect storage charges from the consignee in the instant case.

### Shipment Misrouted Account Delivery Not Tendered at Siding Designated in Bill of Lading

New York.—Question: This company made a carload shipment to the consignee at Seventh Avenue Siding, Jersey City, N. J., via D. L. & W. at Buffalo at the rate of 27 cents per cwt. and the bill of lading executed accordingly by the forwarding agent. The car was placed by the D. L. & W. at Seventh Street, Newark Avenue, Hoboken, N. J., instead of as consigned, and refused to make proper placement without switching charges, so it was necessary for our consignee to pay the Erie Railroad Company $71.29 switching charges on account the D. L. & W. could not make the delivery according to the bill of lading.

The initial road has declined payment of our claim, which

was issued to recover for the over-collection, on the ground that they made placement according to the bill of lading and charges in tariff on file with the Interstate Commerce Commission, and were not in position to acknowledge any responsibility for the mishandling of the consignment. As the initial road accepted this car and bill of lading for Seventh Avenue Siding, Jersey City, we believe they should have made the delivery at the through rate or have corrected the routing via a road which would make this delivery without the additional switching charge.

Kindly advise as to the legality of our contention and cite any court or Interstate Commerce Commission decisions on a similar case and, if we are correct, what procedure is advisable.

Answer: In our opinion the situation outlined above is covered by Interstate Commerce Commission Conference Ruling No. 474, paragraphs (a) and (c), reading as follows:

(a) It is the duty of a carrier to make delivery in accordance with routing directions. Where such routing instructions have not been followed and delivery is tended at another terminal than that designated, it remains the duty of the delivering carrier to make delivery at the terminal designated in routing instructions, either by a switch movement or by carting. In either event the additional expense involved in making such delivery must be borne entirely by the carrier responsible for the misrouting and the reimbursement thereof to the delivering carrier may be made by the carrier at fault without a specific order of the Commission.

(c) The obligation lawfully rests upon the carrier's agent to refrain from executing a bill of lading which contains provisions that cannot lawfuly be complied with, or provisions which are contradictory and therefore, impossible of execution. When, therefore, the rate and the route are both given the shipper in the shipping instruction, and the rate given does not apply via the route designated, it is the duty of the carrier's agent to ascertain from the shipper whether the rate or the route given in the shipping instructions shall be followed. The carrier will be held responsible for any damages which may result from the failure of its agent to follow this course.

If, however, the agent of the carrier, after exercising reasonable diligence, is unable to obtain more definite instructions as to routing, the goods should be sent via the route specified in the bill of lading.

Under the above Conference Ruling, it is our opinion that you are entitled to protection of the 27-cent rate without any additional switching charges, provided said rate is applicable via any route from point of origin to destination, including delivery at the designated siding. Your attention is also directed to the following cases, which cover somewhat similar situations: International Salt Co. of New York vs. Seaboard Air Line, 46 I. C. C. 478; Hutton & Bourbonnais Co. vs. Southern Railroad, 50 I. C. C. 434, and Alfred W. Booth vs. Southern Railway, 59 I. C. C. 139.

It would be our suggestion that you again take the matter up with the carriers, referring them to the above Conference Ruling and cases. In the event they refuse to readjust charges on the basis of the through rate, the only recourse you have is that of filing a formal complaint with the Interstate Commerce Commission.

### Delay in Transit

Indiana.—Question: On September 5 we made shipment of fifteen tons feed to Benton Harbor, Mich. This shipment was billed as a less-carload shipment, and was loaded at our mill door in car furnished by the railroad company and was routed B. & O. and Pere Marquette, and we included in the car several other small orders, making it a westbound way car. Shipment was not delivered until November 8, which left it on the road over sixty days, when the average should be about ten days.

On arrival of this shipment at Benton Harbor customer refused to accept the order, inasmuch as the price of feed had dropped $10 per ton, claiming that the shipment had been out

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an unreasonable length of time, and we wish you would advise whether we would be able to file our claim against the railroad company and secure the loss which we sustained on this shipment due to the unreasonable length of time this shipment was en route.

Answer: The general rule is where the contract of shipment does not obligate the carrier to deliver at a special time, or on a special market, an agreement to deliver within a reasonable time is implied, so that any unreasonable delay constitutes a breach of the carrier's duty.—N. Y. P. & N. vs. Peninsula Produce Exchange, 240 U. S. 34; K. C. M. & O. Railway vs. Odom, Texas, 185 S. W. 626.

To prove unreasonable delay, it is always relevant to show the customary time of transportation between the points involved, and how long it took the carrier to transport other shipments under the same conditions, as well as to show what the customary schedule was. The United States Supreme Court, in the N. Y. P. & N. case, held that what was a reasonable time was a question for the jury to decide after taking into consideration all the facts of the case.

The correct measure of damages in case of a delay in transit which results in a decline in the value of a shipment on arrival is the difference between the actual value of the shipment at destination at the time it should have arrived and the actual value of the shipment at the time it actually did arrive.

We would suggest that you handle the matter with the shipper, with the view of securing evidence that will show the exact date on which the shipment was accepted by the carrier for transportation.

### Collection of Attorney's Fees for Services Before Commission

**Oklahoma.**—Question: Section 8 of the act to regulate commerce provides that the carriers shall be liable for any damages sustained in consequence of any violation of the act, together with a reasonable attorney's fee, to be fixed by the court in every case of recovery.

Section 9 provides that persons damaged may complain to the Interstate Commerce Commission or to any district or circuit court of competent jurisdiction.

Kindly advise if, under section 8, the Commission is not required to make an award of a reasonable attorney's fee in any award of reparation where it is necessary for the shipper to employ an attorney.

Answer: In the case of Meeker vs. Lehigh Valley R. R. Co., 236 U. S. 412, the Supreme Court of the United States had under consideration the allowance of attorney's fees for services before the Interstate Commerce Commission and held that such attorney's fees could not be collected by a complainant.

In this case the court said in part: Section 8 provides that a carrier violating the act shall be liable to any person injured for the damage he sustains, "together with a reasonable counsel or attorney's fee, to be fixed by the court in every case of recovery, which attorney's fee shall be taxed and collected as a part of the costs in the case." Section 16, relating to actions to enforce claims for damages after the Commission has acted thereon, provides: "If the petitioner shall finally prevail, he shall be allowed a reasonable attorney's fee, to be taxed and collected as a part of the costs of the suit."

In our opinion the services for which an attorney's fee is to be taxed and collected are those incident to the action in which the recovery is had, and not those before the Commission. This is not only implied in the words of the two provisions just quoted, but is suggested by the absence of any reference to proceedings anterior to the action.

And that nothing more is intended becomes plain when we consider another provision in section 16, which requires the Commission, upon awarding damages, to make an order directing the carrier to pay the sum awarded "on or before a day named," and then declares that, if the carrier does not comply with the order "within the time limit," the claimant may proceed to collect the damages by suit. The Commission is not to allow a fee, but only to find the amount of the damages and fix a time for payment; and, if the carrier pays the award within the time named, no right to an attorney's fee arises. It is only when the damages are recovered by suit that a fee is to be allowed, and this is as true of the provision in section 8 as of that in section 16. The evident purpose is to charge the carrier with the costs and expenses entailed by a failure to pay without suit—if the claimant finally prevails—and to that end to tax as part of the costs in the suit where in the recovery is had a reasonable fee for the services of the claimant's attorney in instituting and prosecuting that suit. It follows that the District Court erred in matter of law in allowing a fee for services before the Commission.

### War Taxes on Demurrage Charges

**Illinois.**—Question: Allow me to call your attention to your November 20, 1920, issue of The Traffic World, page 1004, in the right-hand column, under caption "Application of Demurrage Charges, War Tax on Demurrage Charges," etc.

You will note by referring to paragraph dealing with tax which reads as follows: "Demurrage charges assessed on cars held at original destination on railroad hold-tracks waiting reconsigning instructions are not subject to war tax. The above is in accordance with article 51 of Regulations 49 (Revised) of the Treasury Department;" that this article 51 to aforesaid regulations covers storage charges, and I am unable to locate quotation which you cite, namely, "demurrage is a charge and a penalty," etc.

Will you be kind enough to advise if this article 51 was not quoted in error? Also advise article governing.

Answer: The quotation in the last paragraph of the answer to "Missouri" to which you refer, is taken from Treasury Decision 3022, which Treasury Decision amends article 51 of Regulations 49 (Revised). Since our answer to "Missouri," a further revision has been made in article 51, by Treasury Decision 3096, which in effect restores the provisions of article 51, as contained in Regulations 49 (Revised), resulting in the imposition of a tax on demurrage charges.

### Carload Rate Not Applicable to Entire Contents of Car When Two Bills of Lading Are Taken Out

**Alabama.**—Question: We made a shipment of iron articles from our plant going to a point in Texas, weight 49,351 pounds, which, of course, takes carload rate. This was made on an order from customers, but before shipment was made an additional order covering some 10,710 pounds came in, with instructions to include in same car at the carload rate, and this we did, but, through error, our shipping clerk billed the small order to a different consignee, though the car was only delivered to original customer, and he unloaded both shipments, as they were really for this one customer. We secured affidavits from our original customer stating the material was for his use and also one from the consignee we used in error, showing that material was for our original customer, but the carriers have declined our claim, giving Conference Ruling 175, Bulletin No. 7, as authority. We do not believe this ruling covers our case, for we had already loaded a carload of material in the car and the carriers did not perform any additional service than if we had properly billed the entire consignment to first customer. If you can refer us to any rulings of the Commission or decisions of the courts that would help us out it will be appreciated.

Answer: Rule 14 of Consolidated Classification No. 1 reads as follows: "Carload ratings or rates apply only when a carload of freight is shipped from one station, in or on one car, except as provided in rule 24, in one day, by one shipper for delivery to one consignee at one destination. Only one bill of lading from one loading point and one freight bill shall be issued for such carload shipment. The minimum weight provided is the lowest weight on which the carload rating or rate will apply."

Under this rule the effect of taking out two bills of lading is the making of two separate shipments.

We do not find that the Commission has ruled upon such a situation, unless Conference Ruling 175 is applicable, which, however, does not definitely state the circumstances under which shipments were delivered to the carrier. In the case of Sheldon & Co. vs. Wabash, 38 I. C. C. 569, in which case the shipper desired to forward a mixed carload of fifth class articles from Chicago to New York, and ordered equipment for that purpose, but through error delivered part of the shipment which was to be loaded in the car to the freight house of the carrier, and two bills of lading were issued, the Commission held that the shipments were not entitled to the carload rate.

Again, in Scudder vs. T. & P., 21 I. C. C. 60, and 22 I. C. C. 60, where the complainant took out two bills of lading covering a consignment of sugar which could have moved on one bill of lading at the carload rate and minimum on the first car and the actual weight and carload rate on the second car, the Commission held that, inasmuch as two bills of lading were taken out, the shipper was not entitled to less than the carload rate and minimum weight on the second car.

While the above cases are not analogous to the instant case, we believe they show that the Commission will, as a general rule, hold that the provisions of the classification rules must be observed by shippers, and that an error on the part of the shipper is not grounds for the disregarding of the classification rules by the carrier.

### Routing—All-Rail Vs. Rail-and-Water

**New Jersey.**—Question: Some time ago we made a shipment to a customer in Green Bay, Wis., and when making the bill of lading the shipping clerk did not give any further routing than "P. R. R." Our customer filed a claim with the St. P. R. R. at Green Bay for the difference between all-rail and rail-and-lake rates. The railroad turned down the claim, stating that had we left the routing entirely blank they could have honored it. Will you kindly give us your opinion on this point?

Answer: It is the carrier's duty, in the absence of complete routing instructions, to forward shipments via the cheapest available route, consistent with the instructions shown on bill of lading. See E. I. DuPont De Nemours & Co. vs. C. R. R. of N. J. et al., 55 I. C. C. 243.

Furthermore, it is the duty of the carrier to secure from

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the shipper a designation of the route via which he desires his shipment forwarded, where both all-rail and rail-and-water routes are available and, failing to do so, the carrier is liable for misroute (See Conference Rulings 190 and 321.) Inasmuch as in the instant case there were both all-rail and rail-and-water routes available, the carrier should have informed the shipper thereof and had him destignate which route he desired to use and, failing to do so, is liable for misroute.

### Reconsignment—Combination of Interstate Rates Applicable to Interstate Movement

**Oregon.**—Question: Shipment of machinery from La Crosse, Wis., consigned to a firm in Portland, Ore., was ordered diverted to Durkee, Ore., a point four miles west of Huntington, Ore., diversion was placed too late with the agent at Huntington and car was not caught until it arrived at Reith, Ore., when car was ordered returned to Durkee, Ore.

Through rate was used from La Crosse to Reith and local distance rate from Reith to Durkee, but tariff in question carried two sets of rates, one which was for interstate traffic, the other on traffic moving wholly within the state of Oregon, both rates filed with the Interstate Commerce Commission. The latter rate was used and question now arises if it was the correct rate.

Answer: Inasmuch as this was a reconsignment, this fact necessarily makes it an interstate shipment through from point of origin to final destination. Had the shipment been diverted at Huntington, Ore., the through interstate rate would have applied, but owing to the fact that the through rate does not apply on a shipment to Durkee, Ore., moving to Reith, Ore., and back to Durkee, Ore., the combination rate must be applied, but this rate must nevertheless be a combination of the interstate rates, inasmuch as a reconsignment is to be treated as a through movement form origin to final destination.

### Conflict Between Destination Shown in Bill of Lading and on Package

**Pennsylvania.**—Question: Bill of lading issued for shipment from an eastern city destined to West Pittsburgh, Pa. Shipment is marked Pittsburgh, Pa. Shipment arrives at Pittsburgh, Pa., and consignee notified. Consignee instructs railroad agent to forward to West Pittsburgh, as he holds bill of lading reading to that point. In the meantime storage accrues at Pittsburgh.

Railroad company forward shipment to West Pittsburgh at local rate from Pittsburgh plus charges from shipping point to Pittsburgh plus storage charges which had accrued at Pittsburgh. Should not the through rate apply on this shipment and should the consignee have to pay the storage charges? Can you cite an Interstate Commerce Commission decision on a case of this kind?

Answer: The Commission has ruled in several cases that when a shipper prepares a bill of lading providing for the carriage of property to a particular destination and marks a different and erroneous address on the package, the carrier will not be held responsible for the freight charges incurred in transporting the property to the destination shown on the package although the correct destination is shown on the bill of lading. Parlin & Orendorff Plow Co. of St. Louis vs. U. S. Express Co., 26 I. C. C., 561; C. S. Brackett Co. vs. G. N. Express Co., 29 I. C. C. 667. Therefore, the additional freight and storage charges must be paid by the consignee in the instant case.

### Interest on Claims for Loss or Damage

**Maine.**—Question: In your issue of September 25, page 576, first column, you make answer to a question regarding interest recoverable on loss and damage claims.

We have quoted this to one carrier in substantiation of our claim, but they do not consider that sufficient, stating as follows:

> We appreciate that the carriers are governed by the Interstate Commerce Commission rulings and the Supreme Court decisions that relate to transportation matters, but we do not understand that there has been any decision that requires the carriers to assume loss of a consequential nature, and therefore, believe it is proper for us to again decline this item representing interest.

Also the following letter:

> I am acknowledging receipt of your favor of 15th inst., your claim 8077-8204, relative to the matter of interest in connection with your claim for value of goods destroyed in wreck and note you are quoting The Traffic World for your authority in demanding the payment of interest on your claim. I, of course, understand when a judgment is obtained it carries with it the payment of interest on the amount of the judgment but it has never been the practice of any carrier to voluntarily pay interest on loss and damage claims and we cannot undertake to do so unless required under compulsion of a judgment.

We would appreciate it if you can give us reference to some direct decision which will help in settling these points.

Answer: Interest is an element of damages which, in accordance with the decisions of the federal courts and many of the state courts, may be recovered in actions againnst carriers for loss of or injury to goods.

However, unless a carrier will voluntarily include interest in the payment of claims, all that can be done is to bring suit therefor, just as it would be necessary to do in the event the carrier refused voluntarily to settle for the net amount of the claim.

### Conversion—Time Within Which to file Suit

**Illinois.**—Question: I note from The Traffic World of November 20, on page 1000, under title, "Conversion," you appear to take the position that when shipment is delivered without surrender of the order bill of lading that the two-year limitation clause in the bill of lading is inapplicable.

I have been inclined to follow the ruling in the case of Georgia, Florida & Alabama Railway Company vs. Blish Milling Company, 241 United States Reports, page 190, where it was held that the parties could not waive the terms of the contract under which the shipment was made pursuant to the federal act, nor could the carrier by its conduct give the shipper the right to ignore these terms which were applicable to that conduct, and hold the carrier to a different responsibility from that fixed by the agreement made under the published tariffs and regulations, although the shipment in question had been delivered to the consignee without requiring the surrender of the order bill of lading. In that case it was the clause in the bill of lading requiring notice of claim that was under consideration, but the situation would be the same in the case of the clause providing for suit to be brought within two years. I would appreciate your further views on the subject, with reference to the authorities you rely upon.

Answer: Paragraph 2 of section 2 of the uniform bill of lading provides: "Claims must be made in writing to the originating or delivering carrier within six months after delivery of the property (or, in case of export traffic, within nine months after delivery at port of export) or, in case of failure to make delivery, then within six months (or nine months in case of export traffic) after reasonable time for delivery has elapsed: Provided, that if the loss, damage or injury was due to delay or damage while being loaded or unloaded, or damaged in transit by carelessness or negligence, then no notice of claim nor filing of claims shall be required as a condition precedent to recovery. Suits for loss, damage or injury shall be instituted not later than two years and one day after the day on which notice in writing is given by the carrier to the claimant that the carrier has disallowed the claim or any part or parts thereof, specified in the notice. Where claims for loss, damage or delay are not filed, or suits are not instituted thereon, in accordance with the foregoing provisions, the carrier will not be liable and such claims will not be paid." This is in accordance with the decision of the Interstate Commerce Commission in the "Decker Case," 55 I. C. C. 453.

Inasmuch as no notice of claim was filed with the carrier within the six months' period, nor was suit entered within the two year and one day period, prescribed in the bill of lading, no recovery can be had. Our answer should have so stated the law to be.

### Claims for Overcharge on Prepaid Shipments to Canada

**Colorado.**—Question: Your company, dealing with the various problems of traffic and knowing that your experience along these lines, have been a great benefit to both shippers and consignees, your name has been recommended to us as a probable solution to a problem we have been experiencing in making carload and less-than-carload shipments to the Dominion of Canada, both from here and eastern shipping points. We have taken this matter up before with various parties directly associated with traffic, but without results.

As you know, on all shipments made from the United States to points located within the borders of the Dominion of Canada, the receiving carriers have insisted that all freight charges be prepaid from point of origin to final destination. The Interstate Commerce Commission later issued circular to shippers and carriers, questioning the right of the carriers to insist on this prepayment. The carriers, however, ignored the Interstate Commerce Commission ruling under this circular, and questioned their right in making this ruling on shipments beyond the jurisdiction of the Interstate Commerce Commission, and still insist that all shipments of this nature be fully prepaid.

It is not a question of prepayment, for all shippers are willing to prepay, if such ruling is necessary, but to Canadian destination, owing to the difference in Canadian and United States exchange, when shipments are prepaid, an overcharge is made of each and every shipment. The present difference in value of the Canadian and United States funds is 9 per cent, or Canadian dollar being only worth 91 cents on our dollar. It is therefore apparent that in prepaying freight charges to Canadian destinations and very plain when through rate is made up of combination or rates over the Canadian border points, that overcharge is made in each and every instance, to amount of 9 cents on every dollar collected, or Canadian carriers' portion of the freight charges. This overcharge is either absorbed by the United States carriers or, if collected by the Canadian carriers from the United States carriers, it is plain overcharge on their part. Owing to the numerous shipments already made and prepaid and the future shipments we will make, this appar-

ent overcharge amounts to a great deal to us, whether we have to prepay or just prepay to the border.

As this matter has been of considerable interest to all shippers to Canadian points, it has undoubtedly come to your attention before and a satisfactory reply given to shipper making request. We would certainly appreciate it if you would inform us what action is necessary, if any, to collect this "overcharge," whether claim should be filed with United States carriers or with Canadian carriers, and what procedure you would recommend to overcome this "overcharge" on our future shipments.

Answer: In its opinion in I. and S. Docket 1191, 59 I. C. C. 263, the Commission disposed of the question of prepayment of charges on traffic to points in Canada, at least in so far as it has the power to pass upon the question involved. The opinion of the Commission, however, goes only so far as to hold that the American carriers are entitled to United States currency in payment for the transportation which takes place within the United States on shipments moving on joint rates to and from points in Canada.

The opinion does not contain anything with respect to the question as to whether or not the American carriers may retain or should refund to shippers any excess over their proportion in United States currency in the event through charges are collected in United States currency and the proportions accruing to Canadian lines are paid to such lines in Canadian currency. The Commission does, however, in its opinion, on page 364, state that its jurisdiction over transportation to or from a foreign country is limited to that part of the transportation which takes place within the United States and that it cannot undertake to pass upon the proposed rules in so far as they affect charges for transportation beyond the borders of the United States, but will leave their validity and propriety to be determined under the laws in force where the transportation takes place. Therefore, it seems that the relief which shippers can hope to secure must come from the voluntary action of the Canadian and American carriers in refunding excess charges due to the difference between Canadian and United States currency, unless by putting in issue the question of the reasonableness of the through rates the matter of divisions is placed before the Commission.

### Liability of Carrier for Goods Stored on Instructions of Party to Be Notified Under Bill of Lading

**Illinois.**—Question: We have noted with interest your answer to "Nebraska" in regard to the liability of carrier for goods stored on instructions of party to be notified under bill of lading as published on page 1036 of the issue of The Traffic World, November 27.

As we interpret your answer, you are upholding carriers in the action they have taken in placing cars in storage which are billed shipper's order. We believe that such a move constitutes reconsignment and, according to the conditions of the general rules covering diversion and reconsignment, the surrender of the original bill of lading, or, in its absence, satisfactory bond of indemnity executed in lieu thereof, or other approved security given at time diversion or reconsignment order is placed is a condition precedent to the acceptance of such orders.

We do not wish this to be interpreted as a criticism, but, as previously stated, believe that before car should have been stored the required document should have first been surrendered. Assuming that after placing of the car in storage the shipment was refused by the intended consignees, what possibility would the shippers have in having the car reloaded and forwarded to another destination without charges on the basis of the local rate being assessed from point of storage to ultimate destination?

Answer: We do not agree with you that the placing of the goods in storage by the carrier upon orders of the party notified under an order notify bill of lading constitutes a reconsignment. There can be no reconsignment unless the billing for the movement into a point contains definite delivery instructions, which in turn are changed by order of the consignor or consignee. Furthermore, the party to be notified cannot reconsign a shipment until he takes up the bill of lading by paying the draft. Again, the requiring of the surrender of an order notify bill of lading, under the provisions of the reconsigning rules, is a matter which lies within the discretion of the carriers and the carriers are not bound to require the surrender of the order notify bill of lading in any instance.

If goods arrive at a destination on an order notify bill of lading, and, owing to the failure of the party to be notified to take up the bill of lading, the goods are placed in storage by the carrier in order to release equipment, the goods can still be reconsigned, as they have not broken bulk nor have they left the possession of the carrier. There has been no delivery of the goods, for the carrier is still liable under an order notify bill of lading for the goods until surrender of the bill of lading, although as a warehouseman only, after the expiration of free time.

Therefore, if a carrier can, in order to release equipment, store goods awaiting delivery without an order from the party to be notified, the carrier, we believe, is justified in doing so upon the request of the party to be notified, as it may rightfully assume that the goods will eventually be accepted by the party to be notified or other disposition made thereof, as the goods have not been refused nor are they unclaimed.

However, in order to facilitate the disposition of the shipment, it would seem to be a reasonable requirement that the carrier notify the consignor after a reasonable time that the goods have not been accepted, but this is not required under the storage tariffs at the present time.

### Allowance for Cleaning Cars

**Ohio.**—Question: We have a large amount of sewer pipe and other like materials arriving in damaged condition, and the railroad companies are requesting us to remove the damaged material from the cars, as they will not pull the cars without the cars being cleaned out. We take exception to this, as the material arrived in a damaged condition, making it useless, and if we have to remove the broken material we will insist upon the railroads paying us for the hauling of this rubbish to the dump, inasmuch as the material was broken, caused by rough handling. We see no reason why we should remove the broken material and load same in our yards, causing accumulation of rubbish.

Answer: While we are unaware of any opinion or decision with respect to this matter, it seems to us that where the carrier has damaged the goods so as to be worthless (although it is possible that the damage might have occurred through improper loading or packing, in which case the carrier would not be liable, in which event, however, the carrier might charge the cost to the shipper) that the carrier should be the one to clean out the cars and should not insist upon the consignee doing it. An allowance could not, however, be made by the carrier, without tariff authority.

### Misrouting—Rate and Route in Bill of Lading

**Kansas.**—Question: Kindly advise in line with the following: A shipment moving from a point in Kansas on the Santa Fe Railway to a point in the Central Freight Association territory, the routing on the bill of lading reading Santa Fe-B. & O. The correct rate inserted in the bill of lading figured on a basis of a short-line haul which routes through St. Louis. The Santa Fe route this shipment through Chicago, which makes an increase in the freight of something over $25. They refuse to honor our claim, stating that the Interstate Commerce Commission has ruled that where routing is shown on the bill of lading they are not required to protect the cheaper rate, even though the correct rate is inserted in the bill of lading.

Answer: Conference Ruling 474-C of the Interstate Commerce Commission reads: "The obligation lawfully rests upon the carrier's agent to refrain from executing a bill of lading which contains provisions that cannot lawfully be complied with, or provisions which are contradictory and therefore impossible of execution. When, therefore, the rate and the route are both given by the shipper in the shipping instructions and the rate given does not apply via the route designated, it is the duty of the carrier's agent to ascertain from the shipper whether the rate or the route given in the shipping instructions shall be followed. The carrier will be held responsible for any damages which may result from the failure of its agent to follow this course. If, however, the agent of the carrier, after exercising reasonable diligence, is unable to obtain more definite instructions as to routing, the goods should be sent via the route specified in the bill of lading." See also F. A. Doyle vs. Louisiana & Northwestern R. R., 52 I. C. C. 327.

### Lawful Tariff Rate Must Be Paid

**Massachusetts.**—Question: Referring to your issue of November 6, page 863, in your answer to "Ohio." I would like to suggest that they might have a change to enter claim on this basis:

Assuming that there was a switching service at destination between the B. & O. and P. R. R., it might be good grounds to enter claim on that as per Conference Ruling 214, the P. C. C. & St. L., which is the only railroad running from Follansbee, W. Va., should have given it to Pennsylvania, who should have carried it to destination and there turned it over to B. & O. in order to comply with bill of lading.

Answer: In the event the only routing specified in the bill of lading covering the shipment in question was "B. & O. delivery" and a lower rate applied via the P. C. C. C. & St. L., P. R. R. and B. & O. R. R. than via the route over which the shipment moved, it was the duty of the initial carrier to forward the shipment via that route, the Commission having held, in several cases, that where terminal delivery only is shown on the bill of lading, it is the duty of the carriers to forward the shipment to the destination named by the cheapest reasonable route according the desired delivery. See American Woods Corporation vs. Southern Railway Co., 40 I. C. C. 63, and Pine Plume Lumber Co. vs. Alculu Railroad Co., 52 I. C. C. 541.

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J. O. GAITHER, New Orleans
D. H. MARSHALL, Meridian, Miss.
J. O. GILL, Laurel, Miss.

## ACCOUNTING CIRCULAR

*The Traffic World Washington Bureau*

J. W. Newell, comptroller of the Railroad Administration, December 4 gave out accounting circular No. 156, to govern accounting officers of each carrier, the property of which was under federal control at the termination of that period. The circular, dated November 20, is as follows:

Effective December 1, 1920, the following rules should be observed in accounting for freight revenue corrections, loss and damage claims, freight overcharge claims and relief claims apportionable between carriers.

Freight revenue corrections and claims relating to interline shipments that originated and were delivered during Federal control, which are chargeable to other railroads under Federal control, shall be absorbed in the accounts of the railroad making the adjustment.

The plan of accounting for freight revenue corrections and for claims relating to shipments originating before Federal control and delivered during Federal control and to shipments originating during Federal control and delivered after Federal control and for accounting for all or any portion of such items which are properly chargeable to railroads which were not under Federal control, shall not be changed.

This circular should not be construed as authorizing any change of the practice in settling claims with shippers and consignees.

## REPORT ON ALASKA RAILROAD

*The Traffic World Washington Bureau*

In his annual report to President Wilson, John Barton Payne, secretary of the Interior Department, reported on the government's Alaska railroad, as follows:

"During July, accompanied by the Secretary of the Navy, I visited Alaska, and inspected the government railroad from Seward to the end of Steel (mile 245) and there observed the laying of ties and rails. They are now laid to mile 264. When completed, the standard-gauge line will extend from Seward to Nenana on the south bank of the Tanana River, 412 miles from Seward, with a standard-gauge branch of 38 miles leaving the main line at Matanuska Junction (mile 151) to the Chickaloon coal mines, with a spur of 3 miles on this branch to the Eska coal mines.

"Fifty-four miles standard-gauge are under operation from Healy (mile 358) to Nenana (mile 412), leaving a gap of 94 miles between Gold Creek (mile 264) and Healy. From the north bank of the Tanana River (North Nenana), a narrow-gauge road of 54 miles is in operation to Fairbanks. From Happy station on this line, 7 miles south of Fairbanks, a narrow-gauge branch of 32 miles extends to Chatanika. Total mileage in operation, 445. Total when completed, 540. The clearing on the gap is practically completed, and approximately 40 miles of grading done. The entire road, including the 3,000-foot bridge over the Tanana River at Nenana, should be completed and in operation by the end of the summer of 1922."

## G. M. & N. TO ABANDON BRANCH

*The Traffic World Washington Bureau*

In a report on Finance Docket No. 7, the Commission has issued a certificate authorizing the Gulf, Mobile & Northern to abandon its Ellisville branch in Jones County, Mississippi. The record in the case was developed for the Commission by the Mississippi railroad commission, which recommended that the company be permitted to abandon the branch. That branch is about 6.6 miles long, extending from Ellisville Junction, which is not even a village, to Ellisville, a town, the population of which decreased from 2,446 in 1910 to 1,681 in 1920. The operation of the branch line, according to the testimony of those using the Gulf, Mobile & Northern, delays service on the main line. Traveling men asked for the abandonment of the branch so that the delay might be avoided. Ellisville is served by other railroads, so that the abandonment of the branch will not affect it adversely. For the first eight months of 1920, according to the Commission's report, the revenue from the branch line was about 12 per cent of the expense incurred in its operation. The Gulf, Mobile & Northern stated on the record that it would reconvey the lands that had been donated to its predecessor corporation, to the donors or their assigns.

## ABANDONMENT AUTHORIZED

*The Traffic World Washington Bureau*

A certificate of convenience authorizing the abandonment of part of the line of the Eastern Texas Railroad Company, between Lufkin and Kennard, has been issued by the Commission in Finance Dock No. 4. The road to be abandoned is 30.3 miles long, with about 4 miles of switch, yard, and passing tracks. It is owned by the St. Louis Southwestern, which bought it in September, 1916. In 1919 the traffic had decreased to 2,072 tons, and in the first five months of 1920 the tonnage amounted to 1,038. The road was originally built to bring out forest products, and, generally speaking, the primary purpose of its construction has been accomplished. The people of the community served by the Eastern Texas objected to the grant of the certificate, because their nearest railroad station would be Crockett, on the International & Great Northern, 17 miles from Kennard and 20 miles from Radcliff.

A certificate and order permitting abandonment, on condition that the persons interested be permitted to buy the property for not more than $50,000, have been issued.

### JACKSONVILLE TERMINAL CO. NOTES

The Jacksonville Terminal Company of Jacksonville, Fla., has been authorized under an order entered by the Commission in Finance Docket No. 1077, to issue, from time to time, during a period of not exceeding two years, promissory notes for $100,000 and $67,500 in renewal of outstanding promissory notes for like amounts. The company also asked for authority to issue notes in renewal of demand notes aggregating $538,425.32 and a promissory note for a proposed loan of $50,000, but the Commission denied that part of the application on the ground that the facts presented were not sufficient to justify that granting of authority at this time for the issue of such notes.

### STOWAGE AND PACKING FOR EXPORT

The proper stowage of export shipments is considered so important in successful export trade that the Bureau of Foreign and Domestic Commerce of the Department of Commerce has just published a special report on the subject. The report was written by Thomas R. Taylor, who is now in charge of the Bureau's Latin-American Division. Its preparation was begun by Mr. Taylor while he was engaged with the U. S. Shipping Board, and it, therefore, contains data gathered through that service, and also some facts and figures compiled by the War Trade Board.

Sixty-eight pages of the volume are devoted to stowage factors showing the type of packing usually employed for export for a wide range of commodities, all of which are shown in alphabetical order. With its aid, the manufacturer or exporter can learn whether he should make use of a packing case, a barrel, drum, bag, box, etc. Measurements are also indicated with gross weights, including information concerning the number of cubic feet occupied by a long ton of such merchandise packed as indicated.

There are chapters discussing the principles and methods of stowing, stowing to secure maximum weight and volume, stowing to prevent damage or danger to the ship or crew, stowing to secure maximum speed and minimum cost, laws relating to the seaworthiness of vessels, and many other related subjects.

The publication is known as Miscellaneous Series No. 92—"Stowage of Ship Cargoes."

### E. J. & E. BONDS

The Elgin, Joliet & Eastern Railway Company has been authorized by the Commission under an order in Finance Docket No. 94, to issue $1,800,000 of equipment trust bonds, to be dated April 1, 1920, and to bear 6 per cent interest. Under the order, $120,000 of the bonds will mature on the first day of April in each year from 1924 to 1938, inclusive. The bonds will be used to pay for 500 double sheated railroad box cars of 80,000 pounds capacity each and 8 eight-wheel heavy switching engines which were allotted to the applicant by the Director General of Railroads.

### LOCATION OF NEW YORK PIERS

A map of New York City and harbor, showing the location of steamship piers, is being distributed free, on request, from the various offices of D. C. Andrews & Co., foreign freight forwarders.

### CONSOLIDATED CLASSIFICATION DOCKET

Docket No. 5 of the Consolidated Classification Committee, for hearings in Atlanta, January 6; New York, January 10, and Chicago, January 17, was printed in The Daily Traffic World of December 8 and also appears in the weekly Traffic Bulletin of December 11.

### L. & J. BRIDGE & R. R. CO. BONDS

The Louisville & Jeffersonville Bridge & Railroad Company has asked permission of the Commission to issue $162,000 of its 4 per cent first mortgage gold bonds for pledging with the Secretary of the Treasury as collateral security for notes covering a loan of like amount from the government. The issue will cover expenditures which have been made and which will be made for construction and improvement of applicant's facilities and when sold the proceeds will be used to pay the government notes. The Cleveland, Cincinnati, Chicago & St. Louis Railway Company filed an application asking authority to guarantee one of the notes, in the sum of $108,000, to be given by the Louisville & Jeffersonville Bridge & Railroad Company. The other note, of $54,000, is to be guaranteed by the Chesapeake & Ohio, which, with the C. C. C. & St. L., owns the capital stock of the applicant.

# Digest of New Complaints

**No. 11840, Sub. No. 2.** Inland Empire Paper Co., Millwood, Wash., vs. Oregon-Washington R. R. and Navigation Co. et al.
Complains of classification of logs of white fir, spruce and hemlock, shipped from various points in Idaho and Washington to Millwood, Wash., as "cords of pulpwood," instead of logs, and that unjust and unreasonable charges resulted. Asks reparation.

**No. 11840, Sub. No. 3.** Same vs. C. M. & St. P. et al.
Same complaint and prayer as to different shipments.

**No. 11960.** F. A. Cocke Live Stock Co. et al., Natchez, Miss., vs. Beaumont, Sour Lake & Western et al.
Unreasonable, exhorbitant and unduly discriminatory rates on numerous carloads of horses shipped during the period of January 1, 1917, to December 31, 1919, from Ft. Worth, San Antonio, Del Rio, Houston, Hebronville, Marfa, El Paso and Kingsville, Tex., to Natchez, Miss. Asks for reparation.

**No. 11961.** David M. Lea & Co., Inc., Richmond, Va., vs. Richmond, Fredericksburg & Potomac et al.
Unjust, unreasonable and discriminatory rates on box shooks from Richmond, Va., to New York as compared with rates from Norfolk. Asks that Richmond rates be decreased to Norfolk basis which is less than lumber rates or that Norfolk rates be increased to the Richmond basis, which is the same as lumber rates, and reasonable rates and reparation.

**No. 11961 (corrected).** Wausau Southern Lumber Co., Laurel, Miss., vs. Gulf & Ship Island et al.
Against the refusal of defendants to furnish equipment in proportion to its needs as found to be equitable by a representative-inspector of the car service section of the American Railway Association. Asks that the Commission prescribe an equitable basis for the distribution of cars at Laurel, Miss., and for a cease and desist order as to the future distribution of cars at the point named. This number was originally applied to the complaint of David M. Lea & Co., Inc., Richmond, Va., vs. Richmond, Fredericksburg & Potomac et al. The Lea complaint was withdrawn from the files and the number given the complaint of the Wausau Lumber Co.

**No. 11962.** Western Petroleum Refiners' Assn. vs. Aberdeen & Rockfish et al.
Unjust, unreasonable and discriminatory practices in that carriers exact track storage charges on gasoline and other articles requiring inflammable placards held in private cars on private tracks where the ownership of the cars and the tracks is the same and the publication and maintenance of a rule arbitrarily making private sidetracks railroad premises when in fact they are not. Asks for elimination of such practices.

**No. 11963.** Southwestern Portland Cement Co., El Paso, Tex., vs. Arizona Eastern et al.
Unjust and unreasonable rates on portland building cement from El Paso, Tex., to Avondale and Cashion, Ariz. Asks for reparation.

**No. 11964.** The P. Koenig Coal Co., Detroit, Mich., vs. Hocking Valley et al.
Unjust, unreasonable and discriminatory switching charges on coal to complainant's yard, located within the incorporated limits of the city of Detroit in that it is not accorded Detroit rates. Asks for Detroit rates and reparation.

**No. 11965.** Galveston (Tex.) Commercial Assn. et al. vs. Alabama & Vicksburg et al.
Unjust, unreasonable, unjustly discriminatory and unduly prejudicial rates on cotton and cotton linters in bales from points of origin in Oklahoma, Arkansas, Louisiana, Tennessee and Mississippi to Galveston, Houston and Texas City, Tex. Asks cease and desist order, just and reasonable rates.

**No. 11966.** Omaha Packing Co. et al. vs. A. T. & S. F. et al.
Unjust, unreasonable and unjustly discriminatory charges as result of alleged practice of defendants in making a charge over line-haul rates for unloading at live stock chutes of complainants' packing houses which is not made at public stock yards. Asks that charge be eliminated or that reasonable allowance be made to complainants for performing this service.

**No. 11967.** Sigmond Rothschild Co. et al., Houston, Tex., vs. Abilene & Southern et al.
Unjust and unreasonable rates on ground peanut hulls from points in Texas to points in Louisiana. Asks for just and reasonable rates and reparation of $930.

**No. 11968.** Washington Steel and Ordnance Co., Washington, D. C., vs. B. & O. et al.
Unjust and unreasonable rates on bituminous coal from points in West Virginia to Uniontown, D. C. Asks cease and desist order, just and reasonable rates and reparation.

**No. 11969.** Hazard Coal Operators' Exchange et al. vs. Louisville & Nashville.
Alleges that defendant has failed to furnish transportation for recently developed coal fields in eastern Kentucky. Asks for order requiring defendant to provide itself with additional transportation facilities consisting of tracks, engines and coal cars to afford adequate transportation.

**No. 11970.** M. Argueso & Co., Inc., New York, vs. Galveston, Harrisburg & San Antonio et al.
Unjust, unreasonable and excessive rates on istle from Texas border points to New York, St. Louis and Galveston during period from June 25, 1918, to the present. Asks just and reasonable rates and reparation.

**No. 11972.** M. L. Davis and W. D. Davis, Ft. Worth, Tex., vs. Gulf, Colorado & Santa Fe et al.
Unjust and unreasonable rates on cattle shipped from Wilson, Okla., to Ft. Worth, Tex.; also from Ft. Worth to Wilson; Ft. Worth to Ringling, Okla. Asks just and reasonable rates and reparation.

**No. 11973.** Northwest Steel Co. et al., Portland, Ore., vs. C. B. & Q. et al.
Unjust and unreasonable rates on rough turned, unfinished forgings from Buffalo, N. Y., Camden, N. J., and Gary, Ind., to Portland, Ore. Asks for reparation of $13,308.

**No. 11974.** Southport Mill, Ltd., New Orleans, La., vs. B. & O. et al.
Unjust, unreasonable and unduly prejudicial rates on cocoanut or copra oil from Baton Rouge, La., to Brooklyn, N. Y., Jersey City, N. J., and Philadelphia, Pa., in that they exceed rates on cottonseed oil. Asks cease and desist order and reparation.

**No. 11975.** Montrose Oil Refining Co., Inc., Ft. Worth, Tex., vs. St. Louis-San Francisco et al.
Unjust, unreasonable, unjustly discriminatory and unduly preferential rates on crude petroleum oil from Cement, Okla., to North Ft. Worth, Tex. Asks cease and desist order, just and reasonable rates and reparation.

**No. 11976.** Bedford Pulp and Paper Co., Richmond, Va., vs. C. & O. et al.
Against a rate of 17½c on wood pulp from Newport News, Va., to Big Island, Va., shipped between August 25, 1919, and December 31, 1919, as unjust and unreasonable because and to the excess over $2.50 per ton, the subsequently established rate. Asks for reparation.

**No. 11977.** Mexican Gulf Oil Co., Pittsburgh, Pa., vs. Midland Valley et al.
Unreasonable and unduly discriminatory rate of 87½c on three C. L. of second hand iron plate tanks, k. d., from Watkins, Okla., to Tampico, Mex., via Port Arthur, Tex. Asks for reparation down to basis of a rate of 69c for the inland transportation.

**No. 11978.** Barrett & Zimmerman, St. Paul, Minn., vs. C. R. I. & P. et al.
Unjust and unreasonable rates on steel horse collars from Davenport, Ia., to Minnesota Transfer and St. Paul, Minn. Asks cease and desist order and reparation.

**No. 11979.** United Paperboard Co., Inc., New York, vs. Canadian National Rys. et al.
Against a rate of 29½c on wood pulp from Chicoutimi, Valjalbert and Ha Ha Bay Junction, Que., to Lockport, N. Y., as unjust, unduly discriminatory and in violation of fourth section in comparison with rate of 26½c from same points of origin to Buffalo, Black Rock and Suspension Bridge, N. Y. Asks reasonable rates and reparation.

**No. 11980.** Michigan R. R. Co. vs. Pere Marq. et al.
Alleges defendants' refusal to establish through routes and just and reasonable rates and divisions thereof prevents complainant from interchanging its freight cars at through and reasonable rates with defendants and compels complainant to subject shippers and receivers of freight to unjust, unreasonable, unjustly discriminatory, unduly preferential and prejudicial rates. Asks cease and desist order and order compelling defendants to put in force and effect through routes, joint classification and joint rates and charges applicable to the transportation of freight to and from stations on complainant's line and also the divisions of such rates and charges in accord with the Act to regulate commerce.

**No. 11981.** Lake Superior Paper Co., Ltd., et al., Sault Ste. Marie, Ont., vs. Ahnapee & Western et al.
Unjust and unreasonable rates on newsprint paper from Sault Ste. Marie, Ont., to points in Nebraska, Colorado, Kansas, Missouri, Arkansas, Oklahoma, Texas and Louisiana. Asks just and reasonable rates.

**No. 11881, Sub. No. 1.** Krauss Bros. Lumber Co., New Orleans, vs. Alabama, Tennessee & Northern et al.
Unlawful demurrage and reconsignment charges on shipments of lumber from points in Mississippi, Texas, Alabama and Louisiana to points in Pennsylvania, New Jersey and Ohio. Ask for reparation.

**No. 11984.** Benton Coal Mining Co., Benton, Ill., vs. C. B. & Q. et al.
Alleges that defendants give an undue and unjust preference and advantage to coal mines at Logan and Royalton in Illinois in the matter of car service. Asks order requiring C. B. & Q. to extend car service to complainant's mines at Benton and same rates accorded to other mines in same rate group.

**No. 11985.** United Paper Board Co., Inc., New York City, vs. C. C. C. & St. L. et al.
Unjust, unreasonable, unduly preferential and prejudicial rates on straw from points in Illinois to Rockport, Ind. Asks cease and desist order, just and reasonable rates and reparation.

**No. 11986.** Standard Oil Co. of Kentucky vs. Illinois Central et al.
Unjust, unreasonable, unjustly discrimintory and unduly prejudicial rates on petroleum products from Baton Rouge, North Baton Rouge, La., to Carbon Hill and Guin, Ala., via Yazoo & Mississippi. Asks reparation in sum of $8,278.68.

## PERMISSION TO ACQUIRE LINE

Authority to acquire and operate the property of the Fairchild & North-Eastern Railway in Clark and Eau Claire counties, Wisconsin, is asked by the Central Wisconsin Railway Company in a petition filed with the Commission. The line to be acquired has not been operated since March 1, the applicant states, and the territory it was built to serve has been greatly inconvenienced thereby. The Central Wisconsin company was organized for the express purpose of leasing and operating the Fairchild & North-Eastern, with the option of buying, the applicant states, and it is its intention to organize another railway company, turn over the option to the latter, sell stock among the patrons of the line who want the line operated and buy the line.

## PERMISSION TO ABANDON LINE

Permission to abandon its line of railroad in Ferry County, Washington, is asked by the Spokane & British Columbia Railway Company in a petition filed with the Commission. The road is 36.30 miles in length, with termini at Danville and Republic, Wash. The road was operated by the applicant from July 1, 1903, to September 27, 1919, when operation was discontinued because of annual operating deficits and losses, due to the proximity of the Great Northern in the same territory, the applicant states. No objection or complaint resulted from the discontinuance of operation, it is stated, and the Great Northern adequately serves the territory.

## CHANGES IN DOCKET

Hearing in 5504, assigned for December 3, at Atlanta, was postponed to a date to be hereafter fixed.

Argument in 9506 and I. and S. 1210, assigned for December 8, at Washington, D. C., was postponed to a date to be hereafter fixed.

Hearing in I. and S. 1245, closing navigation via Great Lakes Transit Corporation, assigned for December 10, at New York, was canceled.

No. 11917, in the matter of distribution of cars for the shipments of coal in interstate and foreign commerce, was assigned for hearing before Commissioner Aitchison in Washington December 4.

## SUSPENSION OF SECTION 28

*The Traffic World Washington Bureau*

The Shipping Board December 10 adopted a resolution providing that section 28 of the shipping act be suspended further by the Commission until further action by the board. The board found American shipping facilities at present inadequate to handle the commerce of the United States to and from all foreign ports. The board also resolved that "every effort will be made to hasten the providing of American shipping facilities so that the provisions of section 28 will be made operative at the earliest practicable date." The board will send a certificate to the Commission requesting indefinite suspension beyond January 1. (For additional matter on this subject see page 1128.)

### APPLICATION FOR LOAN DENIED

The Commission has denied an application of the Gulf Ports Terminal Railway Company and the Pensacola, Mobile & New Orleans Railway Company for a loan from the government revolving fund. Originally the applicants sought a loan of $500,000, which was denied, and later they asked for $300,000. The loan was desired in connection with completion of a line of railroad between Pensacola, Fla., and Mobile, Ala. The Commission holds that the Gulf Ports Terminal Company, which controls the other company, is not a common carrier subject to the jurisdiction of the Commission, and also that the applicants failed to show that the proposed loan was necessary to enable them properly to meet the transportation needs of the public or that the prospective earning power of the applicants and the character and value of the security offered are such as to furnish reasonable assurance of the applicant's ability to repay the loan.

### EQUIPMENT TRUST AGREEMENT

The Chicago & North Western Railway Company has applied to the Commission for authority to establish an equipment trust agreement of 1920, providing for the issuance of equipment trust certificates of $10,000,000, and for authority to issue and sell $9,630,000 of said certificates in connection with the purchase, at an estimated cost of $9,684,093 of 60 locomotives, 500 steel ore cars, 500 steel underframe stock cars, 250 steel underframe refrigerator cars, 50 steel underframe caboose cars, 25 standard steel coaches, 9 steel smoking cars, 2 steel postal cars, 23 baggage cars and 3 combination mail and baggage cars. The certificates will bear interest at not exceeding 7 per cent and be sold at an average price of not less than 97 per cent of par. No arrangements to sell the certificates have been made, the applicant states, but that it is planned to ask bids therefor and sell to the highest bidder.

### P. & W. VA. RY. CO. PETITIONS

Application for a certificate of public convenience and necessity authorizing it to operate the West Side Belt Railroad Company in Allegheny County, Pennsylvania, has been made to the Commission by the Pittsburgh & West Virginia Railway Company. The applicant acquired control of the property, with approval of the Commission, by the purchase of 21,300 shares of capital stock. The Pittsburgh & West Virginia, in a separate application, also asks authority to increase its capital stock from $39,600,000 to $47,000,000, the additional capital stock to be used in carrying out the provisions of the contract under which the West Side Belt property was acquired.

### EXTENSION OF NOTES AUTHORIZED

By an order in Finance Docket No. 1062, the Commission has authorized the Trans-Mississippi Terminal Railroad Company, the Texas & Pacific Railway Company, Missouri Pacific and J. L. Lancaster and Charles L. Wallace, receivers of the T. & P., to enter into a written agreement with the Equitable Trust Company of New York as trustee and the present holders of $3,653,000 of 6 per cent gold notes issued by the Trans-Mississippi company under which the notes will be extended from November 1, 1920, to November 1, 1923. The rate of interest will be increased from 7 to 7½ per cent.

### SHIPS FROM HOG ISLAND

One hundred and twenty-five ships of a total deadweight tonnage of 956,750, with the highest rating of Lloyd's and American Bureau, have been launched to date at the Hog Island shipyard, according to the Shipping Board. One hundred and fifteen ships of a total deadweight tonnage of 900,750 have been delivered, and have steamed over 3,043,441 miles and have carried over 3,020,665 tons of cargo. In the year ending April 17, 1920, 79 ships of total deadweight tonnage of 619,575 were launched and 74 ships of total deadweight tonnage of 579,050 were delivered.

### MICHIGAN PAINT AND VARNISH ASSOCIATION

A permanent organization has been effected of paint and varnish manufacturers' traffic managers under the name of the Michigan Paint and Varnish Manufacturers' Traffic Association. It is the purpose of this association to consider general traffic matters of local interest in the state of Michigan. Meetings are to be held on call from the chairman and secretary. V. A. Rogers, of the Flint Varnish and Color Works, Flint, Mich., is chairman and Thomas Feeny, of the Detroit Graphite Company, Detroit, Mich., is secretary.

### INVESTIGATION OF PREFERENTIAL RATES

The United States Tariff Commission, according to its fourth annual report, has in progress an investigation of preferential transportation rates by railroads, not only in the United States but in foreign countries, and also by ocean carriers. An effort is being made, the commission says, to determine as fully and definitely as possible the relation of such preferential rates to the operation of the customs duties imposed by the United States.

### ALLOCATION OF VESSELS

The United States Shipping Board has allocated to the Pacific Mail Steamship Company and the Matson Navigation Company four of the 13,000 deadweight ton combination cargo and passenger vessels owned by the board. The Pacific Mail will get the Creole State and the Wolverine, and the Matson company will get the Hawkeye State and the Buckeye State. The vessels, according to information at the Shipping Board, will be used in the Pacific in the Oriental trade.

### RECONSTRUCTION OF TRACK

The Philadelphia, Newton & New York Railroad Company, in an application filed with the Commission, asks for permission to abandon a small part of its track in Philadelphia, Pa., and to reconstruct the track so as to make room for the construction of buildings.

### LOAN TO C. G. W. APPROVED

The Commission has approved a loan of $240,000 to the Chicago Great Western Railroad Company to enable it to meet the interest on bonds of the Mason City & Fort Dodge Railroad Company, a subsidiary line.

### VA. SOUTHERN BONDS

The Virginia Southern Railway Company, in petition filed with the Commission, asks authority to issue $150,000 of first mortgage bonds, of which $76,000 are to be deposited with the government for a loan of $38,000 and $74,000 are to be put up as collateral for a bank note of $37,000.

### LOAN TO TRANS-MISSISSIPPI TERMINAL CO.

The Commission has approved a loan of $1,000,000 to the Trans-Mississippi Terminal Railroad Company to aid it in meeting the maturity of its 6 per cent gold notes, due November 1, 1920, in principal amount of $3,653,000. The applicant itself is required to finance $2,653,000 to meet the loan of the government.

### EMBARGO CIRCULAR CANCELED

"Circular CCS-67, issued under date of August 4, with respect to embargoes against cars in intra-city switching service, is hereby canceled," the car service division of the A. R. A. has notified railroads in Supplement No. 1 to that circular.

### LOAN TO FT. SMITH & WESTERN

The Commission has approved a loan of $156,000 to the receiver of the Fort Smith & Western Railroad Company to aid the company in the purchase of equipment and in making additions and betterments to existing equipment and way and structures at a total estimated cost of $425,356. The company itself is required to finance about $270,000 to meet the loan of the government.

### INCREASE IN CAPITAL STOCK

The Milledgeville Railway Company of Augusta, Ga., asks authority, in an application filed with the Commission, to increase its common capital stock from $30,000 to $60,000 for the purpose of retiring $30,000 of outstanding first mortgage bonds.

### PERMISSION FOR STOCK ISSUE

The Muskegon Railway and Navigation Company, in a peti- par value of common capital stock, and $762,800 of first mortgage 6 per cent thirty-year gold bonds. The applicant states the proposed stock and bond issues are for the purpose of completing its line of railroad in Muskegon Heights, Mich., and for the development of its trans-lake service.

### D. & H. STOCK ISSUE

The Delaware & Hudson Company has filed an application with the Commission asking authority to issue not exceeding $9,634,000 of its capital stock for conversion purposes.

# Docket of the Commission

**Note. Items in the Docket marked with an asterisk (*) are new, having been added since the last issue of The Traffic World. Cancellations and postponements announced too late to show the change in this Docket will be noted elsewhere.**

December 13—Washington, D. C.—Examiner Butler:
**Ex Parte 73**—In re regulations for payment of rates and charges.

December 13—Argument at Washington, D. C.:
**11831**—In the matter of intrastate passenger fares of the Denver & Rio Grande R. R. Co. and other carriers between points in the state of Utah.
**11762**—In the matter of intrastate fares of the Michigan Central R. R. Co. and other carriers in the state of Michigan.
**11830**—Ohio rates, fares and charges.
**11703**—In the matter of intrastate rates within the state of Illinois.
**11861**—In the matter of intrastate rates, fares and charges of the A. C. L. R. R. Co. and other carriers in the state of Florida.
**11829**—In the matter of intrastate rates, fares and charges of the Union Pacific R. R. Co. and other carriers in the state of Nebraska.
* **11894**—Indiana rates, fares and charges.
**Ex Parte 73**—Regulations for payments of rates and charges.

December 13—Jackson, Miss.—Before the Mississippi R. R. Commission and Examiner Mackley:
**Finance Docket 9**—In the matter of the application of the Jackson & Eastern Ry. Co. for a certificate of public convenience and necessity to construct a line of railroad in Mississippi.

December 13—Wichita, Kan.—Examiner Wagner:
**11836**—Wichita Board of Commerce et al. vs. A. T. & S. F. et al.
**11906**—Hyre-Price Live Stock Commission Co. et al. vs. M. K. & T. of Texas et al.

December 13—Selma, Ala.—Examiner Kephart:
**11682**—Chamber of Commerce of Selma, Ala., et al. vs. Louisville & Nashville et al.

December 13—Fremont, Neb.—Examiner Jewell:
**11675**—Nye-Schneider-Fowler Co. vs. C. & N. W. et al.

December 13—Chicago, Ill.—Examiner Archer:
**11757**—C. St. P. M. & O. Ry. Co. et al. vs. Great Lakes Transit Corporation.

December 13—Columbus, O.—Examiner J. E. Smith:
**11843**—The Central Refractories Co. vs. T. & O. C. et al.

December 13—Kansas City, Mo.—Examiner Money:
**I. and S. 1242**—Grain and grain products Chicago to Kansas City.

December 14—Chicago, Ill.—Examiner Archer:
**11566**—St. Louis Independent Packing Co. et al. vs. C. & A. et al.
**11687**—Morris & Co. vs. Director General.

December 14—Omaha, Neb.—Examiner Jewell:
* **I. and S. 1239**—Salt from Utah to San Francisco.

December 15—Marshall, Tex.—Examiner Howell:
**Finance Docket 31**—In the matter of the application of the Marshall & East Texas Ry. Co. for a certificate of public convenience and necessity to abandon its line of railroad in Texas.

December 15—Washington, D. C.—Chairman Clark:
**11756**—Bangor & Aroostook R. R. Co. et al. vs. Aberdeen & Rockfish et al.

December 15—Birmingham, Ala.—Examiner Kephart:
**11854**—Birmingham Packing Co. vs. N. & N. E. et al.

December 15—Argument at Washington, D. C.:
**I. and S. 1212 (and first supplemental order)**—Joint fares in connection with the Southern Pacific Co.
**11338**—Great Falls Brick and Tile Co. vs. C. B. & Q. et al.
**10717**—Portland Traffic and Transportation Assn. and Oregon Portland Cement Co. vs. Sou. Pac. et al.

December 15—Canton, O.—Examiner J. E. Smith:
**11391**—The Whitacre-Green Fireproofing Co. vs. Pa. et al.

December 16—Chicago, Ill.—Commissioner Woolley:
**4844**—In the matter of bills of lading (uniform domestic bill of lading).

December 16—Chicago, Ill.—Examiner Woodrow:
**I. and S. 1218**—Live stock loading and unloading charges (2).

December 16—Argument at Washington, D. C.:
**11163**—Northern Potato Traffic Assn. vs. B. & O. et al.
**11164**—Northern Potato Traffic Assn. vs. A. T. & S. F. et al.
**11091**—Central Ill. Coal Traffic Bureau vs. A. T. & S. F. et al.
**11149**—Fifth and Ninth Districts Coal Bureau vs. A. T. & S. F. et al.

December 16—Chicago, Ill.—Examiner Archer:
**I. and S. 1238**—Combination rule on petroleum to Clinton and Harrisonville, Mo.

December 17—Knoxville, Tenn.—Examiner Mackley:
**I. and S. 1247**—Coal from Cumberland R. R. to southeastern points.

December 17—Washington, D. C.—Examiner Butler:
**11692**—The Lehigh Coal & Navigation Co. vs. Director General.

December 17—Argument at Washington, D. C.:
**11193**—Bell Lumber Co. et al. vs. Ahnapee & Western et al.
**11386**—State of Idaho ex rel. Public Utilities Commission of the state of Idaho vs. Oregon Short Line et al.
**11140**—Board of Railroad Commissioners of the state of South Dakota vs. A. T. & S. F. et al.

December 17—Washington, D. C.—Examiner Oberlin:
* **Finance Docket 1067**—In the matter of application of Richmond Terminal Ry. Co. for authority to issue $3,100,000, face amount, of promissory notes.

December 17—Little Rock, Ark.—Examiner Howell:
**I. and S. 1241**—Grain from Mississippi and Missouri River crossings to Arkansas.

December 18—Argument at Washington, D. C.:
**11291**—J. B. Taylor vs. Great Northern et al.

December 18—Chicago, Ill.—Examiner Disque:
* **11703**—In the matter of intrastate rates within the state of Illinois. (On the matter of excursion, convention and other fares for special occasions, commutation and other multiple forms of tickets, extra fares on limited trains and club car charges.)

December 20—Omaha, Neb.—Examiner Jewell:
**11866**—Omaha Chamber of Commerce, Traffic Bureau, vs. C. & N. W. et al.

December 20—Argument at Washington, D. C.:
**11415**—St. Louis & O'Fallon Ry. Co. vs. East St. Louis & Suburban et al.
**11253**—Pittsburgh Terminal R. R. & Coal Co. vs. Pa. et al.

December 20—Washington, D. C.—Examiner Money:
**11662**—Charleston, S. C., Mining and Manufacturing Co. vs. Director General.

December 20—Louisville, Ky.—Examiner Kephart:
**11885**—West Kentucky Coal Bureau vs. Ill. Cent. et al.

December 20—Topeka, Kan.—Examiner Disque:
**11916**—In the matter of intrastate rates, fares and charges in the state of Kansas.

December 21—Argument at Washington, D. C.:
**11265**—Sun Company vs. Delaware River & Union et al.
**11146**—Automatic Sprinkler Co. of America et al. vs. Alabama & Vicksburg et al.
**11229**—Louis Werner Stave Co. vs. Director General and Louisiana Ry. and Nav. Co.
**11159**—Choate Oil Corporation vs. C. R. I. & P. et al.
**11159 (Sub. No. 1)**—Home Petroleum Co. vs. A. T. & S. F. et al.

December 21—Washington, D. C.—Examiner Money:
**11826**—The Fullerton Powell Hardwood Lumber Co. vs. Virginia-Carolina Ry. et al.

December 22—Argument at Washington, D. C.:
**11514**—Davis Mfg. Co., Inc., vs. L. & N. et al. Portions of fourth section applications 1548 and 1952.
**11358**—Louisville Cement Co. vs. Director General.
**11252**—Virginia-Carolina Chemical Co. vs. Director General.

December 22—Washington, D. C.—Examiner Money:
**11844**—Ingram-Day Lumber Co. vs. L. & N. et al.

December 23—Argument at Washington, D. C.:
**11487**—Buckeye Veneer Co. vs. Director General.
**11355**—Central Pennsylvania Lumber Co. vs. Director General and Pennsylvania.
**11432**—George A. Fuller Co. et al. vs. A. C. L. et al.
**11394**—A. B. Alpirn vs. C. B. & Q. and Director General.

December 23—Washington, D. C.—Examiner Money:
**11718**—The Standard Red Cedar Chest Co. et al. vs. Alabama Great Southern et al. Such fourth section departures as may exist in the adjustment of rates will be considered by the Commission in the disposal of this complaint.

December 27—Argument at Washington, D. C.:
**11283**—Miami Copper Co. vs. Arizona Eastern et al.
**11479**—Consolidated Gas, Electric Light and Power Co. of Baltimore vs. Canadian Pacific et al.
**11403**—Nestle's Food Co., Inc., vs. Mobile & Ohio et al.

December 28—Argument at Washington, D. C.:
* **11275**—Carnegie Steel Co. vs. Pittsburgh & Ohio Valley et al.

January 5—Washington, D. C.—Examiner Butler:
**I. and S. 1240**—Water competitive rates on lumber.

January 5—Argument at Washington, D. C.:
* **10745**—National Wholesale Grocers' Assn. of the U. S. vs. Alabama & Vicksburg et al.
* **10745 (Sub. No. 1)**—Southern Wholesale Grocers' Assn. et al. vs. Sou. et al.

January 6—Argument at Washington, D. C.:
* **10704**—Tidewater Oil Co. vs. C. of N. J. et al.
* **10816**—Three Lakes Lumber Co. et al. vs. Washington Western et al.
* **8167**—Three Lakes Lumber Co. et al. vs. Washington Western et al.
* **I. and S. 193**—Joint rates with the Washington Western Ry. Co.

January 7—Argument at Washington, D. C.:
* **10514**—South Bend Chamber of Commerce et al. vs. B. & O. et al.
* **10858**—State of Idaho ex rel., Public Utilities Commission of the state of Idaho, vs. Oregon Short Line et al.

January 12—Argument at Washington, D. C.:
* **11367**—Benwood & Wheeling Connecting Ry. Co. vs. P. C. C. & St. L. et al.
* **9922**—Lake Charles Rice Milling Co. vs. Abilene & Northern et al.

## CENT. OF GA. BOND ISSUE

The Central of Georgia Railway Company has applied to the Commission for approval of an issue of $998,000 of 6 per cent refunding and general mortgage bonds to be placed in its treasury to have available on short notice for sale or pledge as necessity may demand.

## NEW CONSTRUCTION PLANNED

The Uvalde & Northern Railway Company, in a petition filed with the Commission, asks for a certificate of public convenience and necessity authorizing it to construct and operate 37 miles of railroad between Uvalde, Tex., to Camp Wood, Tex. The territory to be served is not reached by any other railway, it is stated, and will traverse a section that is being developed agriculturally.

## PETITION FOR ABANDONMENT

Permission to abandon the Barnwell branch of the California, tion filed with the Commission, asks permission to issue $416,500 Arizona & Santa Fe in San Bernardino County, California, is asked by that company and the A. T. & S. F., which leases the line, in a petition filed with the Commission. Lack of traffic is given as the reason for abandonment, which has been approved by the Railroad Commission of California.

## AUTHORITY FOR STOCK INCREASE

Authority to increase its capital stock from $1,500,000 to $2,500,000 is asked by the Detroit & Toledo Shore Line Railroad Company in a petition filed with the Commission. The applicant proposes to use the additional stock for reimbursement of expenditures made from income.

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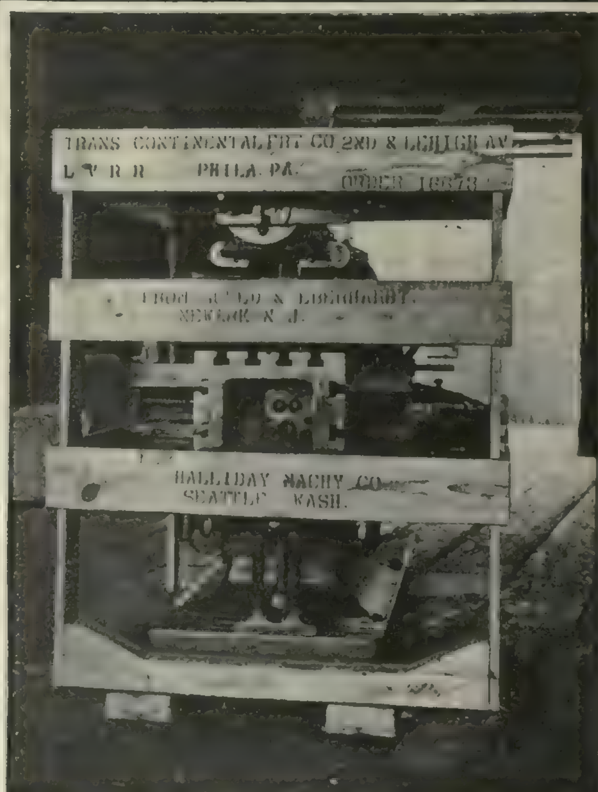


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## SHIPPERS AND CARRIERS GET TOGETHER

It is a matter for congratulation not only to the parties immediately concerned, but to the public at large, to which proper conditions of transportation mean so much, that the conference between shippers and carriers held in New York December 14 (as told elsewhere in this magazine) has resulted as it has. Of course, the agreement is thus far only on paper and its practical results remain to be seen, but we have no doubt that the carriers are sincere in their representations of desire for co-operation and that much good will come of the agreement to have a working arrangement composed of a joint committee of carriers and representatives of the National Industrial Traffic League for the frank discussion of all points of controversy where the matter is of general interest and importance. It is just that practical working arrangement for which we have contended. It cannot fail to work if those responsible for it desire it to work and are at all disposed to be reasonable in their consideration of transportation problems.

The Traffic League has cause to feel proud of the position it has achieved in the transportation world whereby it is recognized as the body with which the carriers must consult. But it should be humble in its pride and realize that its success is not to be viewed merely as a personal triumph by those who have been its leaders. Rather, it should realize and work in the realization that it has a great responsibility to the business public. On its shoulders rest the burden of negotiations with the carriers on all points involving general or regional importance.

The League has grown—and properly so—for it has been a valuable body to its members and the public. It must and doubtless will continue to grow. It needs more members in order that it may have the money with which to prosecute its increasing activities; but more than it needs members do shippers need to become members of it, for it is the medium through which they have representation in conflicts with the carriers. The way to get that representation fully is to belong to the League and have a voice in its proceedings. We do not wish to be understood as bally-hooing for League members. We have no interest in the League other than as it is a valuable agency in the proper working out of transportation troubles. It is not only valuable, but it has now reached the point where its value is generally recognized—by the Commission, by the shippers, by the carriers, and, we hope, by the public generally.

We tender our sincere compliments to the representatives of carriers who have taken the broad ground evidenced by their attitude at the New York conference. But we knew all the time this possibility existed. All that was necessary was to invent and set in motion some actual machinery for co-operation.

## INLAND WATERWAY DEVELOPMENT

President Markham, of the Illinois Central Railroad, in his address before the National Rivers and Harbors Congress (published in The Traffic World of December 11) discussed ably many of the problems involved in the relationship between rail and water transportation. He did not discuss all of them and he did not settle, or attempt to settle, all that he did discuss. Many of them seem almost impossible of actual settlement. Undoubtedly, however, there is opportunity for progress.

It goes without argument that the ideal system of transportation in this country would be the most logical and efficient possible utilization of natural waterways and the most efficient co-ordination of the rail lines, the waterways, and the highways. Such an ideal co-ordination and utilization would be possible only under government ownership, of course, and it would be possible even thus only on paper—for government ownership does not work in practice as in theory. Preserving our present economic system of private ownership, then (and we prefer it, with all its manifest and necessary imperfections, to the dream of perfection under government ownership), we shall have to be content with something less than the ideal system. We ought, however, to reach an understanding as to just what can be accomplished and just what it is unreasonable to expect to see accomplished, and set about it earnestly to do the best we can.

This, as Mr. Markham suggests, is an auspicious

time for the development of our waterways as carriers of commerce, for the reason that the railroads, which otherwise might be expected to offer opposition and in the past undoubtedly have offered such opposition successfully, have no longer the same reason for jealousy with regard to water carriers that may take part of the business the rail carriers themselves may wish to haul. The new transportation act makes it incumbent on the Interstate Commerce Commission to fix rates so that the carriers, as a whole in the country or by groups, may earn a certain per cent on their valuation. If, then, the water carriers take away part of their business they "should worry"—the Commission would still have to see them made whole under the law.

But here the question arises as to whether it is good economy to foster boat lines to carry business that the rail lines might otherwise carry, if the taking of this business from the railroads is to result in higher freight rates. That is one of the problems in the situation. Another is whether it is fair for the government, by general taxation, to provide for the improvement of waterways that may be used to carry freight in competition with rail carriers that get no help from the government and have to pay for their own roadways, while their water rivals have none of this expense. Ought not the cost of maintaining waterways to be a charge, at least in part, against the shippers of freight by water?

Why not a commission to study the subject? The report of such a commission, if the right kind of one were appointed, might well be expected to materialize in legislation, for instance, constituting the Interstate Commerce Commission the body in charge of all transportation regulation—not to force certain things which it could have no power to force, but to evolve a plan for development and co-ordination and with power to see to it that rail, water, and highway development were at least in accord with the plan. The Interstate Commerce Commission already has such power with respect to railroad consolidations. It cannot compel them, but it is to make a plan for consolidation of the railroads into large systems and then see to it that no changes are permitted that are not in harmony with the plan. The idea of consolidation of railroads may not be good, but if it is good or if, whether it is good or not, it is to be the rail transportation policy of the country, certainly Congress has gone about it in the right way to insure its being worked out properly. Congress has declared no policy with respect to the kind of consolidations that are to be permitted or the results to be obtained by them, leaving that to the Commission to work out. It might do better than that if, after consideration of the entire transportation problem—water and highway as well as rail—it declared a policy and left the details to the Commission.

We think such a law, if enacted after proper study, would be practicable and wise. Without it we shall still have waterways running to waste, so far as commerce is concerned, and unimproved highways and undeveloped motor truck possibilities that might and should be utilized. Of course, the law could not compel capital to build boats or to buy and operate motor trucks for short haul freight business, but it could make those fields attractive in many ways, including, possibly, offering aid in financing. Certainly capital would be more ready to seek such investment if it could be assured against cut-throat railroad competition and that it was embarking on plans that bore the government approval stamp.

We have dallied with this problem too long. Now and then and here and there, there have been attempts by the government to develop waterways as carriers of commerce, the exigencies of the recent great war having afforded an excellent opportunity. But the attempts have been spasmodic and unsystematic. What is needed is a carefully wrought plan based on sound policy. The railroads, if the principle of the present law with respect to their revenues is to be maintained, would have little selfish call to fight it. The business public would support it as offering more and better transportation facilities. The mere theorist would, of course, be for it as offering an ideal to be desired.

Of course, we could not hope for a scheme that, even in the course of the years necessary to bring it anywhere near its possibilities of perfection, would be perfect. There would always be duplication of service and the chance of lean times for either the rail carrier or the water carrier where they were in competition—possibly for both. This could not be avoided by anything short of absolutely efficient government operation —and that we should never have. The amount by which the plan fell short of perfection would be the measure of what we paid for retention of the principle of private ownership and competition as against public ownership with its own inefficiency, its wastefulness, and its political dangers.

When the railroads are congested and business suffers in consequence, everybody is for some such plan as we have suggested. "Increase the transportation facilities," is the cry. But when the congestion passes, the enthusiasm dies. Just now there is no railroad congestion and business is being transported fairly well, notwithstanding the shortage and the bad condition of railroad equipment. But bad times will come again, as they have come before. Why not take the subject up now, approaching it from a non-partisan, patriotic point of view, and work out a business-like conclusion?

Not the least of the arguments in favor of such a scheme is that it would abolish the present wasteful method of appropriating money for waterway improvements by the government. The member of Congress with the best ability to get such things done or with the most available trading facilities at the time, is the one who generally gets improvements for his community or that his constituents may happen to want. There is little system. All this would be changed. Only such improvements would be made as the Interstate Commerce Commission thought wise and of value in the development and improvement of the general transportation plan.

The scheme would also settle the controversy as to whether the railroads should be permitted to own

(Continued on page 1196)

# Current Topics in Washington

**Money Reason for Disarmament Consideration.**—More serious consideration is being given by public men in Washington to disarmament than at any other time since that step toward the millenium has been put forward among the strong nations of the earth. There may be, it has been suggested, a pocket-nerve reason for the seriousness. It is that, for the first time in its history, the United States has a debt that makes it sober. The Civil War left a debt of less than three billions in bonds. The debt now is about eight times that of the Civil War period. Of course, the nations of Europe owe billions to us, but they are not even paying interest on it. We, however, are keeping up the interest on the bonds we issued to provide the money we sent to them. The World War did not result in endearing any party in any country to the people thereof. Every administration in power at the beginning of the World War has been repudiated. Lord George's is the only one that came in during the war that endures. Some way has got to be found to pay the war debts without increasing taxes. For months this country has not been keeping even in its finances. Retrenchment, it has been suggested by men who have to deal with the situation, is the only way to prevent further taxation. Retrenchment can be made in the military establishment easier than any other. It is argued that there is not an administration in Europe that would dare suggest keeping armaments at the present level. Secretary Daniels, in his program for new construction, suggests another three-year program that would continue to give the American navy the edge over the British in heavy hitting ships, but he recommends it only in the event that the United States does not become a member of the League of Nations. In that way, some of his political critics suggest, he can be an advocate of disarmament in accordance with the teachings of his pacifists, and hold a fair standing among those who think it the duty of the nation to have the premier navy, with an army hardly big enough to police the Rio Grande. Secretary Baker is recruiting an army that is said to be larger than the law allows and is being criticized therefor, which may be taken as a sign that Congress is inclined to cut military expenses so that the income of the country, without any added taxes, will be adequate to carry the load of one billion a year for interest alone. That sum is so great that when the appropriations for the two years of one Congress just thirty years ago amounted to a billion, the party in power was defeated on the ground that it was extravagant. Now, if present military and naval plans were carried out, the country would have to spend nearly five billions a year, which, in turn, would be equivalent in cost to 400 buildings like the national capitol each year, at pre-war prices.

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**Unusual Attack on the Commission.**—An attack on the Commission in a report to one of the houses of Congress is a novelty to that body. In the thirty odd years of its life it has been able to satisfy Congress to the extent, at least, of not being subjected to fire by any of its committees. No influential member of either house has even been suggested depriving it of any of its power. The proposals have all been the other way about. The additions to its power made in the transportation act, every well informed man probably is willing to admit, made it the most powerful administrative body on earth. The British Board of Trade is fairly powerful, but a close comparison, it is believed, would show the Interstate Commerce Commission to be more potent than it. In the earier days, the railroads used to take flings at it. They are not doing so now. The inclination seems to be for the public to take hacks at it with any kind of instrument that comes to hand. The discovery (?) that the Commission has great sway over the fortunes of men is not so great as some members of the Calder committee have suggested. The power to make railroad rates, affirmatively conferred in 1906, was the power to prescribe the limits in which business might be done by those not most favorably situated, geographically, or financially. Before the Commission received that power the railroad traffic managers exercised it, but to a more limited extent. In fact, one of the arguments used in favor of the creation of a Commission with rate-regulating functions was that it was unseemly that any other than public officials should have the power to make or unmake manufacturers and traders. The late W. A. Percy of Memphis, according to the views of many, most aptly defined the powers of the Commission, when he declared, with more or less heat, that it was an amphibian endowed with powers of aviation. He was speaking of the Commission as it was about eight years ago. He had strong powers of expression, but there is a suspicion that he would have to think a long time before finding a phrase to cover the whole of the Commission's activities, now that it has been authorized to prescribe the maximum, the minimum or absolute rate, say when a railroad may be extended, when it may abandon part of its line, when buy more cars and engines, what kind, allow or forbid the issuance of stocks or bonds, and how, when, and where operate trains, and has been directed to take from a company that earns more than 6 per cent a definite portion of the excess and invest the money so taken, and, between times, figure out plans for the consolidation of railroads. Regulation of wages is the only thing it has not been authorized or directed to do. If it had been willing to take on that work, Congres would have probably said "Go to it."

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**Powers of the Commission.**—Much of the power that was given to the Commission last winter, it may be suggested, was piled on it because Congress was so disgusted with the Railroad Administration that anything commissioners were willing to suggest or unwilling to oppose was added to its already heavy load. The objections of the Calder committee, it has struck some of those who have read outlines of it, run to the manner of the execution of the car service power, rather than to the exercise thereof. Commissioner Aitchison, who had immediate charge of the administration of the car service part of the first section, early realized that he was likely to have the fate of the peacemaker befal him. He had no illusions about the reactions that would follow the exercise of those powers. The Railroad Administration grabbed for power, exercised it, and, in the language of the person who advised inspection of the white woolly lamb that went to Pittsburgh, "Look at the d—— thing now." Every time the Commission hit the car congestion problem in the stomach it bulged out in the back. The stomach and the back now are both sore. The fact that the country got coal when, in the eyes of the railroad executives, that seemed almost impossible, is forgotten, even as the good things the Railroad Administration did. In other days the Commission rather shied away from a suggestion of additions to its powers and duties. Last winter, possibly resenting the slighting attitude assumed toward it by the Railroad Administration, it may have been willing and anxious to gather into its arms all the powers suggested. Some of its ardent supporters thought at the time that it was too willing to be loaded with honors and powers that would tend to make the dissatisfied ones find fault with the way it executed those powers.

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**Exercise of Car Service Functions.**—Just before the Commission began issuing its car service orders, consumers of coal, railroad executives and operators of mines clamored for help from the Commission. All bitterly railed at the "abuse" of cars by automobile manufacturers and other "non-essential" users of coal. Those who desired the transportation of materials for roads and houses wanted priority for their business and when they did not obtain it they became critical. Manufacturers objected to the exportation of coal, but would not even discuss the propriety of limiting the exportation of articles made by the burning of coal. Mine operators insisted that coal was their finished product and that they should be allowed to export it if the makers of shoes were permitted to export shoes made by the use of coal. In fact, the arguments reminded one of those made during the consideration of a customs tariff bill, with mine operators insisting on a duty on coal, users of coal insisting on its being placed on the free list, and so on down the list, each claiming that somebody else's finished product was his raw material and, therefore, properly assigned to the free list. It has been suggested that the Commission played favorites, as if it were possible to grant priorities without giving something to one that was denied to another. The mere fact that the Commission, by order, said who should have cars, showed discrimination, but whether that was unjust discrimination and therefore unlawful, is one of the things that will probably be debated in Congress a lot before the winter is over, even if it is a short session and only routine business is supposed to be done.

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**Gartner Appears in Supreme Court.**—It is likely that the Commission will soon lose another of its experienced examiners. The fact that Karl K. Gartner appeared in the Supreme Court on Wednesday to argue a case (Vandalia R. R. Co. vs. Gustav A. Schnull et al.), involving rates prescribed by the Indiana commission in 1906, to which the Vandalia objected on the ground of confiscation, is taken as significant. Gartner had permission from the Commission to appear before the court, which is seldom asked, because, as a rule, litigants do not think of the examiners as experts whom they might retain for such purposes. If requests of that kind were common the Commission might not grant them. Gartner appeared in court to suggest that the question at issue (rates from Indianapolis to the Indiana-Illinois line) is so bound up in the question of discrimination against interstate commerce, by reason of the amendment to the interstate commerce law authorizing the Commission to remove such discriminations on complaint from a railroad company, that it has become an administrative question cognizable by the Commission. Therefore, the implication that the court might well send the litigants to the Commission was plain. The point is novel, to say the least. The Supreme Court is not greedy for work that any other body can do. It acts on the theory that it

has enough to do in passing on things that it is obvious somebody else cannot handle. In all the cases involving questions that could be disposed of by the Commission, the court has sedulously avoided taking jurisdiction. In the same way, unless the law requires it, refuses to hear any case prior to the entry of a final decree. The law permits appeals from interlocutory orders in cases arising under the interstate commerce law, but there are not many statutes giving a litigant the right to ring the door bell of the Supreme Court before he has been thrown finally out of the chambers of the courts below. When he is out on the sidewalk, then and then only, as a rule, the highest court in the land will open its door just a little to see if he is worthy of an opportunity to be heard further. Gartner's suggestions is that the court tell the Vandalia that the Commission is at Eighteenth street and Pennsylvania avenue and that its business is to examine into such matters as it is presenting.

**New England Divisions.**—New England conservatism has been one of the things the country has known about just as it has known about the multiplication table. It is believed, however, that the declaration of C. F. Choate, Jr., attorney for the New England carriers in the case in which they are asking for larger divisions from their trunk line connections, that some of the divisions are so old that nobody can remember when they were established, will give new point to observations on the steadiness of the habits of the people in that part of the country. Many of them, he said, were established forty and fifty years ago, while others were inherited. Practically every big railroad in the country has been reorganized in the period covered by some of the divisions. Therefore, it is suspected, nobody will accuse Choate of bolshevism in asserting that conditions are very different from what they were when the bases for dividing the money were agreed on. But whether the changes in conditions favor increases to the New England carriers or a continuation of divisions as they are is one of the points to be established or disproved in the proceeding the first testimony in which was taken on December 15. One effect of the contention of the New England carriers, made so that the public can know about the matter, appears to have been a driving down of the price of New England railroad stocks and bonds. In the old days the unsatisfactory condition of the New England carriers would not have become public, it is believed, until it was necessary to begin judicial proceedings. Then the securities would have slumped violently. Insiders would have known about conditions so long that they would have an opportunity to get rid of some of their holdings. The early revelation of conditions, it is believed, will constrain some of the financial interests to take steps to stabilize the situation which they might not have taken under the old order of things. In that view of the matter, it is suggested, the new condition is better than the old. A. E. H.

## CLAYTON ACT EXTENSION

*The Traffic World Washington Bureau*

Without debate, the Senate on December 17 passed the bill extending the effective date of section ten, Clayton Anti-Trust Act, to January 1, 1922. A similar bill is pending in the House.

Representative Esch, chairman of the House committee on interstate commerce, reported to the House, December 15, the bill providing for extension of the effective date of section 10 of the Clayton anti-trust act to January 1, 1922. The committee's report, recommending passage, stated that the section was "unworkable."

After a hearing before the House committee on interstate and foreign commerce, December 14, at which Alfred P. Thom, general counsel of the Association of Railway Executives, and Bird M. Robinson, president of the American Short Line Railroad Association, appeared, the committee voted to report the bill favorably.

Mr. Thom said the effective date of the section had been extended several times by Congress because it had been demonstrated that the section, as applied to the railroads, was impracticable, and would really result in increasing the prices of materials and supplies to them, rather than keeping prices down. He said he had drafted the bill which was introduced in the Senate last week by Senator Frelinghuysen and that the measure was designed to supersede Section 10 of the Clayton act and remedy the defects of that section.

Application of the section as it stands would tie up the railroads in the matter of buying supplies, Mr. Thom said, and require the roads to get competitive bids on everything they bought because of the requirement that purchases must not be made by a railroad company of a supply company in which an officer of the railroad company is interested financially, except where competitive bids are asked.

In Mr. Thom's opinion, buying by the competitive-bid method would be most expensive for the railroads. He characterized the section as unworkable and as imposing, if made effective, undue restrictions on the railroads.

Mr. Robinson said the section would operate injuriously to short lines, because most of them were controlled or owned by the person or persons in a community who also controlled the companies from whom the railroads had to buy their supplies.

A letter from Commissioner McChord of the Commission to the effect that the Commission had no objection to the proposed extension of the effective date was read.

Senator Frelinghuysen introduced a bill (S. 4576) December 8 providing for the repeal of section 10 of the Clayton anti-trust act and the amendment of the interstate commerce act by the addition of a new paragraph to section 20-a of that act. The new paragraph to be added to the act is a substitute for section 10 of the Clayton act, which forbids "inside dealing" between railroads and supply companies in which officers or agents of the carriers have a financial interest which might constrain them to disburse moneys of the railroad corporation in such a way as to benefit themselves.

The proposed substitution provides that after December 31, 1921, there shall be no dealings except under the terms now carried in section 10 of the Clayton act and exempts from the prohibitory provisions dealings between a parent railroad company and its subsidiaries. It provides, however, that where there are dealings between such companies the prices the parent company exacts for materials or supplies shall be no higher than the amounts the parent company places in its operating accounts for similar articles or supplies and which accounts are those required to be filed with the Interstate Commerce Commission.

Transactions between common carrier corporations and companies dealing in materials and supplies in which there is a community of interest, the section provides, shall be on the competitive bidding basis, but that no bid shall be considered unless the names and addresses of the officers, directors and general manager thereof, if the bidder be a corporation, or the members if the bidder be a partnership or firm, are given with the bid. It is further provided that this paragraph shall not apply where no competition is possible by reason of the fact that the article of the special type or character desired or the desired supply can be had only of a single maker, or seller at the point required; nor shall it deprive a carrier of the right to exercise an honest business discretion in determining which bid, under all of the circumstances of the case, is, by reason of the responsibility of the bidder or otherwise, most favorable to its interest. Violation of the new paragraph, it is provided, by any common carrier, may be punished by a fine not exceeding $25,000, and any officer of the company aiding or abetting such violation may be fined not exceeding $5,000 or confined in jail not exceeding one year, or both.

### Coal Regulation

Representative McLane of Pennsylvania (Dem.) introduced a bill (H. R. 14755) in the House providing for the regulation of the sale and price of coal. The bill provides for placing the power of regulation in the Interstate Commerce Commission.

## ANTI-STRIKE BILL PASSES SENATE

*The Traffic World Washington Bureau*

The Poindexter bill, designed to prohibit interference with interstate commerce, was unexpectedly passed in the Senate December 16 without a roll call and only a few senators present. The measure was favorably reported at the last session and was on the calendar. Unobjected bills were being considered by the Senate when the Poindexter bill was reached. Inquiry by the Vice-President as to objections brought no reply. He then declared the bill passed. Senator La Follette, an opponent of the bill, on learning of the action, made a motion for reconsideration, which will be voted on later.

The provisions of the bill are more sweeping than the Cummins anti-strike provisions which were eliminated from the transportation bill. Whoever would, in any way, induce railroad employes to quit work, with intent to prevent movement of commodities, would be guilty of felony, punishable by a fine not exceeding ten thousand dollars, by imprisonment not exceeding ten years, or both. Whoever would, by threats, force, or violence prevent rail employes from working would be guilty of felony, punishable by a fine not exceeding fifteen thousand dollars, by imprisonment not exceeding fifteen years, or both. Damage to rail property for the purpose of preventing movement of commodities is declared a felony, punishable by a fine not exceeding ten thousand dollars, imprisonment not exceeding ten years, or both. The bill prohibits employes of carriers entering into agreement to hinder the operation of trains to enforce demands.

### AUTHORITY FOR BOND ISSUE ASKED

Authority nominally to issue $5,900,000 of its development and general mortgage 4 per cent bonds, payable April 1, 1956, and when so issued to pledge same as security, in part, for a loan of $3,825,000 from the United States, is asked in a petition filed with the Commission by the Southern Railway Company. The loan, which has been approved by the Commission, is to be used to aid the applicant in acquiring freight train equipment.

# Decisions of Interstate Commerce Commission

## REFRIGERATION CASE AFFIRMED

In a third report on No. 7969, National Poultry, Butter & Egg Association vs. Baltimore & Ohio Southwestern et al., opinion No. 6475, 59 I. C. C. 413-26, the Commission has affirmed its second finding, that the total charge on any quantity shipments of poultry, butter and eggs, and cheese, in official classification territory, between March 20, 1915, and June 1, 1917, was not unreasonable. That was a reversal of the first holding that the imposition of a separate charge for the refrigeration had not been justified and that reparation should be made. (See Traffic World, December 11, p. 1116.)

The net outcome of the three reports is that the shippers obtain a victory in the first report, a nominal victory in the second, and a complete defeat in the final. The original report is in 43 I. C. C., 392, and the second in 51 I. C. C., 34.

Mountains of exhibits containing cost studies were put into the record by both shippers and carriers and practically nine-tenths of the reports by the Commission have been devoted to a discussion of the cost of carrying less-than-carload traffic. There was a wide margin between the totals as figured by statisticians and economists for the shippers and the carriers, but the Commission gave the carriers the benefit of the doubts and decided that the shippers should not have returned to them the payments they made for refrigeration on their any-quantity shipments in the period mentioned.

Commissioner Eastman, in a dissenting opinion, called attention to the fact that the cost studies were based only on less-than-carload shipments, but that about one-half the traffic involved in this case was in carloads. As to them Eastman said he was not able to avoid the conclusion that the shippers should have reparation.

In disposing of the cost figures and the whole matter, the Commission said

"In considering all the ramifications of this case there is danger that the main purpose of defendants' cost studies will be obscured. That purpose is to ascertain, with a reasonable degree of approximation, the cost of handling less-than-carload freight. It can not be determined with accuracy, or with a very near approach to accuracy. The attempt has been made merely to approximate the cost in the same manner that it was made in other proceedings before us, only here the study has been made under an improved and more comprehensive formula. The method was used in the Missouri River-Nebraska Cases, 40 I. C. C., 201, Railroad Commission of Louisiana vs. A. H. T. Ry. Co., 41 I. C. C., 83, and the C. F. A. Class Scale Case, supra. In the first named case the study was made by the Nebraska State Railway Commission and covered the Lincoln, Neb., station of the Chicago, Burlington & Quincy Railroad Company as a point of origin and other Nebraska stations as points of destination. The average direct costs on the first four classes, which cover less-than-carload shipments, was found to be 10.92 cents. By dividing this figure by 68 per cent, the average operating ratio of the carrier named for the immediately preceding five years, 1910 to 1915, inclusive, it was increased to 'approximately 16 cents,' which it was said by us would be 'at least a minimum requirement to provide for such items' as general expenses, taxes, depreciation and return upon property. The corresponding figure found by the carriers in this proceeding from dividing ascertained costs by the average operating ratio of 71.43 for the immediately preceding five wears was 16.85 cents.

"While the cost figures here submitted are pertinent to the issues, they have throughout the case been given a prominence perhaps disproportionate to their real value. They were featured in the last report, as in the present one, because they formed the basis of the greater part of the evidence. But they are not the only consideration. Among other matters of importance are the history of the rates, the character of the traffic, and the incidents of its transportation.

"The development of the refrigeration service of the carriers has been gradual. The icing of shipments began by placing a box of ice in the car and in other simple and inadequate ways. Later a type of refrigerator car was constructed and experimented with, which in course of time developed into one for practical and extensive use. During the early part of the experimental period the shipments of dairy products under refrigeration were few and the tonnage was light. No charge above the class rates was then made for icing. As the facilities for carriage improved the tonnage shipped in refrigerator cars grew, and this method of shipment was encouraged by the carriers. Still no charge above the class rates was made for the refrigeration service. This record is devoid of evidence tending to show that any change in the classification of dairy products has at any time been made for the purpose of recompensing the carriers for the added service and equipment incident to the transportation of these products under refrigeration. In other words, the record does not establish that any change in the classification of dairy products has at any time been made which would not have been made had there been no shipment of these products under ice and in refrigerator cars. The early history of the rates on dairy products is set forth at some length in the last report. It shows, in addition to the foregoing general sketch, that in the past the practice of the several carriers in the matter of an extra charge for icing has not always been uniform, and that some of the carriers in official classification territory have at times made the extra charge.

"Dairy products now move principally in refrigerator cars and are given expedited service. Taking the products as a whole they move under ice a large part of the year. It can not be seriously questioned that they constitute a high grade of traffic which should take a comparatively high rating for the line-haul service without refrigeration.

"The rate on dairy products does not represent a high percentage of their total value. It was shown in the last report that in 1915 the relation between the Chicago-New York rates and the average wholesale price in New York was 2.41 per cent on butter, 3.96 per cent on eggs, 3.47 per cent on cheese, and 4.48 per cent on dressed poultry, whereas the percentage ranged from 9.02 per cent on cranberries to 22.33 per cent on bananas, 19.96 per cent on peaches, 27.34 per cent on pineapples, and 31.80 per cent on watermelons. The percentage on other perishable commodities was also shown to be higher than on dairy products.

"After full consideration of the record we adhere to the conclusions reached in our former report on rehearing, and accordingly find that the aggregate rates paid by complainants herein for line haul and refrigeration, for the transportation of dressed poultry, butter and eggs, and cheese, in any quantity, throughout official classification territory during the period from March 20, 1915, to June 1, 1917, are shown to have been reasonable for the service performed.

"This finding makes it unnecessary to pass upon complainants' contention that this case can be differentiated from the Kansas Car-Lot Case, in which we denied reparation on carload shipments of dairy products moving during this period between points in the same territory that is involved herein.

"Such finding is not only required by the evidence in this proceeding but comports with the logic of the general rate situation with respect to dairy products as affected by the Kansas Car-Lot Egg Shippers' Association Case, supra. In that case a carload rating of third class was established for shipments of dairy products in carloads throughout official classification territory. No reparation was awarded, although the proceeding covered the reparation period of this case, during which the icing charge was added to the class rates which then applied on carload as well as on less-than-carload shipments. Since that decision the icing charge has been, and now is, added to the third-class rate. Whether it should logically be added also to the less-than-carload class rates is not an issue herein."

## RATE ON GASOLINE ENGINES

With a vigorous and detailed dissent by Commissioner Meyer, in which Commissioner Eastman concurred, the Commission has dismissed No. 10529, Dort Motor Car Company vs. Pennsylvania Railroad, Director-General, et al., opinion No. 6467, 59 I. C. C. 374-77, holding that the combination fifth class rate of 32.6 cents from Williamsport, Pa., to Flint, Mich., on gasoline engines, via Pennsylvania and Pere Marquette through Buffalo, was not and is not unreasonable.

Meyer and Eastman disagreed with their colleagues as to both the law and the facts, the former pointing out a conflict between the testimony of a witness for the Pennsylvania and the declaration of the attorney for the Pennsylvania on brief in which the attorney said that the witness, "with equal propriety," had done the thing which the witness for the complainant said he had done, but which the witness for the Pennsylvania denied having done. As quoted by Commissioner Meyer, the record is made to show that a material fact in the case was as claimed to be by the Dort company, if the statement of the attorney in his brief is taken as having any value as testimony.

Thirty-five carloads of gasoline engines were moved on the combination rate, because, as contended by the Pennsylvania, the shipper routed them over the route of movement. The shipments were made in December, January and February, 1916-17. When they moved, there was a joint through commodity rate of 22.3 cents over a number of routes, some or all of which were embargoed. The majority and the minority of the Commission do not agree even as to whether all the lower rated routes were

embargoed. Meyer named a number of routes over which the joint rates applied that were not named by the majority in its list of routes over which the lower rate would have applied but for embargoes. According to Meyer, some of the routes over which the lower rate applied were not embargoed. But the route over which the Pennsylvania would have had the longest haul was embargoed. It had the shortest haul over the route shown in the billing. In three of the routes over which the lower rate applied, Meyer pointed out, the Pennsylvania willingly offered to short-haul itself.

The propriety of the embargoes, the majority commissioners said, was not attacked. The case, so far as the Commission's report shows, revolves around the question of whether the shipper routed the shipments. The witness for the complainant said the Pennsylvania refused to accept the shipments unrouted, although, as pointed out by Meyer in his dissent, it had an alternative routing provision in its tariffs, which would have enabled it to forward the shipments without routing instructions.

"This provision was plainly applicable to shipments routed by carriers, not shippers," said the Commission. "As the shipments moved in accordance with the shipper's specific instructions, this contention is untenable (that the shipments should or could have been accepted unrouted and moved via the route over which the traffic moved, at the lower joint through rate). The alternative routing provision, by its terms, applies the joint rate 'if for any cause, the carriers for their convenience' send the traffic over the alternative route."

In his dissent Commissioner Meyer commented on the conclusion of the majority "that under such circumstances the originating carrier may not be required to short-haul itself," by calling attention to what he set forth as the fact that the Pennsylvania willingly offered to short-haul itself over three of the routes. "The complainant is thus required to pay a rate that is over 46 per cent higher than the joint through rate voluntarily established over all these routes," observed Mr. Meyer. He also called attention to the fact that each factor in the combination has been increased since January 1, 1910, but that the carriers produced no proof to show that the factors and the through rate are not unreasonable, a burden placed on them by the law.

The dissenting commissioner said that from the conflict between the witness and the attorney for the defendant he would have to conclude as a finding of fact that the Pennsylvania did refuse to accept the shipments without routing. He said it was the duty of the Pennsylvania to have accepted the shipments unrouted for forwarding over routes not embargoed. In this case the Pennsylvania did not accept the shipments unrouted and then claim that the route through Buffalo was the "cheapest available route." The Pennsylvania admitted, Meyer said, that the shipments could have been accepted unrouted and, under the alternative routing provision, the joint rate could have been protected, but that that was not the custom when joint rate routes are closed by embargoes. In commenting on that Mr. Meyer said:

> Embargoes are primarily ordered for a carrier's convenience on account of operating reasons which are for the most part entirely within the carrier's control. We should be careful not to penalize shippers unnecessarily on account of embargoes. I am of the opinion that, where because of embargoes shipments move via other routes, the applicable tariff should be construed strictly, and if it is open to that construction, as it is in the instant case, the shipper should be given the benefit of the joint through rate. This could have been done if he Pennsylvania's agent had not refused the shipments unrouted.

## DETENTION OF PULPWOOD

An order of dismissal has been made in No. 10657, R. E. Duvall & Co., Inc., vs. Pennsylvania, Director General et al., opinion No. 6480, 59 I. C. C. 442-3, the Commission holding that charges assessed on a car of pulp wood, held at Chesapeake Beach, Md., intended for interstate shipment, but unloaded at the beach, were not unreasonable or otherwise unlawful. The car was loaded in July, 1918, while there was an embargo against an intended consignee at Piedmont, W. Va. The complainant contended that inasmuch as there was no contractual relation such as would have existed had a bill of lading been issued, the demurrage rates could not be imposed. According to the report of the Commission, the complainant cited cases arising under the common law to show that the charges were illegal but the Commission, without citing them, said they did not apply. Demurrage amounting to $140 was collected. The Commission found that $160 should have been collected and directed the collection of the undercharge.

## RECONSIGNMENT OF SCRAP IRON

The Commission has dismissed No. 10872, Ohio Iron and Metal Co. vs. C. & N. W. Director-General et al., opinion No. 6456, 59 I. C. C. 314-5, holding that the charge on a carload of scrap iron from Milwaukee to Indiana Harbor, reconsigned from Muncie to destination, were not unreasonable. The shipment was delivered to the North Western unrouted, billed to Muncie, in July, 1916. Complainant had intended to bill the scrap to Indiana Harbor. When the error was discovered a telephonic request to divert the car to the Indiana Harbor Belt was made and written instructions were forwarded immediately. But when the written request was received the car had left the rails of the North Western. Owing to a Saturday half holiday and Sunday intervening, the reconsignment was not made until after the car reached Muncie. The complainant proceeded on the theory that the North Western was negligent. The latter made no effort to cause the diversion because its tariffs did not permit reconsignment of that kind. The Commission held that it was the North Western's duty to take the necessary steps to effect reconsignment. The North Western merely asked the Big Four to hold the car at Muncie for advice. The forwarding to Muncie was at the complainant's request, but the failure of the North Western was not held by the Commission to relieve the complainant from the payment of the combination on Muncie.

## RATES ON PETROLEUM AND PRODUCTS

A readjustment of rates on petroleum and its products has been ordered on or before March 17, 1921, in a report on No. 10660, Independent Home Oil Company vs. Atchison, Topeka & Santa Fe et al, opinion No. 6472, 59 I. C. C., 398-403. The Commission found rates on petroleum and its products from the Midcontinent Field in Kansas and Oklahoma to Fairmont, N. D., Claire City, and New Effington, S. D., and Wendell, Minn., not unreasonable nor unduly prejudicial, except that the rates on the commodities mentioned to Fairmount and Wendell were, are, and for the future will be, unduly prejudicial to the extent that they exceeded, exceed, or may exceed rates contemporaneously maintained to Breckenridge and Fergus Falls, Minn., and to the extent that the rate on refined oil to Fairmont exceeded, exceeds, or may exceed, a combination constructed by using a commodity rate to Wilmar, Minn., and adding thereto 75 per cent of the fifth-class rate from Wilmar to Fairmount. Reparation was denied.

## FARE OF CARETAKERS

Having read the applicable tariff rule, the Commission has reversed its first finding and order in No. 9782, Swift & Co. vs. San Antonio & Arkansas Pass et al., opinion No. 6479, 59 I. C. C. 440-1. The effect of the reversal is to award reparation with respect to passenger fares paid by live poultry care-takers on returning to their homes from escorting shipments of live poultry from trans-Missouri territory to the east.

In the original order the Commission directed the return of money paid when the caretakers returned to their homes over the routes over which the poultry had moved, but denied reparation on fares paid on routes other than those over which the shipments of chickens had moved. The denial was based on the assumption that the return routes of the caretakers were restricted to the routes of movement. The applicable rule, however, permitted return via any route to the junction of the western carrier regardless of the basis on which the through rate from point of origin to eastern destination was constructed.

## RATE ON CONDENSED SKIMMED MILK

Application to condensed skimmed milk of the same rate that is borne by cream, in shipments from Hanover, Pa., to Jacksonville, Fla., moving in 1918, the Commission has held, in a report on No. 10450, Hanover Creamery Co. et al. vs. Pennsylvania Railroad Company, opinion No. 6481, 59 I. C. C. 444-7, was not unreasonable. It held that it was unreasonable, however, for the Southern Railway to collect on a 250 can minimum when it furnished equipment in which that number of cans could not be loaded, and ordered reparation on shipments in which the minimum was not loaded.

The basic question to be considered was whether the condensed skimmed milk should be accorded the fresh milk rate or be compelled to pay the higher rate assessed on fresh cream, and the condensed products of milk. The Commission came to the conclusion that it would not be just to allow the condensed skimmed milk to have transportation at the rate applied on fresh milk because it is of considerably greater value, per can, than the fresh whole milk. It is not as valuable as fresh 40 per cent cream, the rate applied to it. Another factor considered by the Commission was that when condensed skimmed milk sours it is of no valuable use whatever. Cream, however, no matter if sour, is used in making butter.

## ALLOWANCE FOR SWITCHING

A finding of undue prejudice and an order to remove it on or before March 1 next have been made in a report written by Commissioner McChord on No. 10739, Central Iron & Steel Co. vs. Pennsylvania Railroad Company et al., opinion No. 6470, 59 I. C. C. 385-90. The finding is that the failure of the defendants, Pennsylvania and Philadelphia & Reading to switch and spot at the complainant's plant at Harrisburg, or to make an allowance to the Central company to cover the cost of the service performed by it, was and is not unreasonable, as alleged by the complain-

ant. But, according to the report, the failure and refusal subject the Central company to unjust discrimination and undue prejudice to the undue preference and advantage of the Midvale Steel and Ordnance Company and the Lukens Iron and Steel Company at Coatesville, various competitors in the Philadelphia district, the Cambria Iron and Steel Company at Johnstown, the Carnegie Steel Company at Pitsburgh and the Lalance & Grosjean Manufacturing Company at Harrisburg, all of which are in competition with the complainant.

The Pennsylvania and the Reading quit spotting for the complainant, the former in 1909 and the latter in 1910 and 1911. No allowance was made to the Central company, which acquired engines about the time the trunk lines quit performing the switching and spotting. Negotiations on the subject of an allowance resulted in an agreement that such allowances should begin on January 1, 1918. These agreements, however, were not carried out by the Railroad Administration.

In its complaint the Central company asked for reparation amounting to about $90,000 from each of the trunk lines. The Commission, however, found that the failure to switch and spot for the complainant was not unreasonable, so reparation is not due under the rule in the Darnell-Taenzer case, which the Commission would have set aside if it could have its way.

On the ground that no damage had been shown, the Commission denied reparation.

### LOCAL AND JOINT PASSENGER FARES

In a report on I. and S. No. 1206, local and joint passenger fares on the Wheeling Traction System, opinion No. 6477, 59 I. C. C., 430-34, Commissioner Meyer said that the proposed interstate passenger fares between points on the traction system had not been justified. Instead, however, the Commission recommended a zoning system which will be acceptable. The suspended schedules are to be canceled without prejudice to the filing of schedules in conformity with the suggestions of the Commission, on short notice.

## RATES ON PLASTER

The Commission has dismissed No. 10912, Acme Plaster Cement Co. vs. Pere Marquette et al., opinion No. 6474, 59 I. C. C. 411-12, holding that the legally applicable rate of 29.5 cents on cement from Grand Rapids, Mich., to Lynch, Ky., via Louisville, was not unreasonable. The complainant contended that inasmuch as the rates on cement moving to points south of the Ohio were made on combination and that inasmuch as General Order No. 28 intended that only one factor should stand the increase, the combination on Louisville was unreasonable, especially in view of the fact that a lower rate applied via Cincinnati.

The Commission held that, without regard to what General Order No. 28 intended to accomplish, the rate had not been shown to be unreasonable. The lower rate via Cincinnati was open to the shipper. It, however, designated the route via Louisville under a misapprehension as to where the junction point of the Big Four and L. & N. was, a mistake which the complainant admitted it had made. The carriers, however, charged a rate of 30.5 cents, which the Commission said was not in accordance with the tariffs, and on which it said they should make refund.

### BAR IRON, OKLAHOMA TO KANSAS

Reparation has been awarded in No. 11106, United Iron Works, Inc., vs. St. Louis-San Francisco, Director General, et al., opinion No. 6455, 59 I. C. C. 312-3, on account of unreasonable rates on bar iron from Sand Springs, Okla., to Pittsburg, Kan. Rates of 26 to 45 cents per 100 pounds were charged, the former before and the latter after June 25, 1918. Contemporaneously, rates of 20 and 25 cents were in effect to Parsons, Kan., a more distant point on the same rails. They were and are published in accordance with rule 77, for intermediate application. Reparation is to be made to the basis of the 20 and 25 cent rates.

### GRAIN, ST. LOUIS TO CINCINNATI AND LOUISVILLE

In a report on I. and S. No. 1198, Grain from St. Louis to Cincinnati and Louisville, opinion No. 6478, 59 I. C. C. 435-9, the Commission held that the proposed restriction of proportional reshipping rates on grain from St. Louis to Cincinnati and Louisville and points taking the same rates had been justified except that in so far as the suspended schedule would increase the rates on grain originating within the 100-mile zone of the river at points from which the rates to East St. Louis exceed the rates to St. Louis. To prevent confusion the Commission directed that the suspended schedule be cancelled without prejudice to their right, on short notice, to affect the cancellations herein found to have been justified.

### GASOLINE, W. VA. TO MINNEAPOLIS

An award of reparation has been made in No. 11196, Ohio Cities Gas Company vs. Chesapeake & Ohio, Director-General et al., opinion No. 6459, 59 I. C. C. 320, on account of an unreasonable rate on gasoline from Cabin Creek Junction, W. Va., to Minneapolis, via Chicago. The unreasonableness consisted of a joint through rate in excess of the aggregate of the intermediates. The joint rate was 41.9 cents, while the combination on Chicago made only 38 cents. The departure from the fourth section was not protected by proper application. The rate since the movement of the gasoline in January, 1918, has been corrected.

# Tentative Reports of the Commission

## RATES ON CLOVER SEED

Rates applied on six carloads of white clover seed shipped from Gilby, Grand Forks and Michigan, N. D., to Omaha, Neb., in the period from October 30, 1919, to January, 1920, inclusive, were not unreasonable, but were unduly prejudicial, and the discrimination should be removed, Examiner Paul O. Carter proposes that the Commission find in disposing of No. 11478, Nebraska Seed Co. vs. Director-General, as agent, et al.

"The Commission should find that the rates from Gilby, Grand Forks and Michigan, N. D., to Omaha, Neb., are not unreasonable, but that they are unduly prejudicial," the examiner said. "An order should be entered requiring the defendants to remove the discrimination by the publication of rates from Gilby, Grand Forks and Michigan to Omaha not less than 5, 10 and 15 cents, respectively, under the rates in effect from those points to St. Louis."

## REPARATION ON SISAL

Assistant Chief Examiner Ulysses Butler, in a proposed report on No. 11382, American Manufacturing Company vs. Missouri Pacific, recommended a holding of unreasonableness and an award of reparation on 41 carloads of sisal, imported from Mexico, on account of a tariff rule which required the application of the domestic rate of 21 cents instead of the import rate of 17 cents per 100 pounds.

The tariff rule in question, in effect in April and May, 1916, provided that the import rate should be applied on the outbound movement of sisal held in warehouses owned by the carrier or in appraisers' stores. At the time this sisal arrived at New Orleans there was no room in the railroad warehouses and the complainant was compelled to store it in a privately-owned warehouse. Mr. Butler said that the Commission should find that the application of the tariff provision in question to the before-described shipments was unreasonable to the extent that it resulted in charges higher than would have resulted had the import rate been applied.

### RATES ON CRUSHED STONE

An award of reparation is recommended by Examiner Henry B. Armes in a tentative report on No. 11572, Birdsboro Stone Co. vs. Pennsylvania et al., on a proposed finding that rates on crushed stone from Monocacy, Pa., to intrastate destinations between June 25, 1918, and October 25, 1918, were unreasonable. The examiner recommends that the Commission find the charges assailed were unreasonable to the extent that they exceeded those based upon the scale of rates found reasonable by the Commission in the Birdsboro Case, 49 I. C. C. 681, plus the increases authorized in the Fifteen Per Cent Case and by G. O. No. 28.

## CHARGE FOR MOVING IRON

A finding of unreasonableness and an order of reparation have been recommended by Examiner John A. McQuillan in a tentative report on No. 11476, Pequest Company vs. Director-General, as agent. The examiner's recommendation is that a reasonable charge for the service of moving iron ore in carloads from Pohatcong Railroad interchange tracks near Oxford Furnace, N. J., to Oxford Furnace, would not have exceeded $7.50 per car. That rate of $7.50 per car is now in effect and the recommendation is that reparation be made to that basis.

The length of the movement is about 1 mile. The shipments on which reparation is to be made weighed 831,900 pounds and charges were collected at the legally applicable rate of 60 cents,

which was a commodity rate, which the defendants said was less than half of the class rate applicable to iron ore.

## COAL, ILLINOIS TO LOUISIANA

Examiner F. E. Early has recommended the dismissal of No. 11626, Tallulah Cotton Oil Company vs. Missouri Pacific, Director-General et al., on a holding that the rate on bituminous coal from southern Illinois mines to Tallulah, La., was not unreasonable nor unduly prejudicial. The allegation was that a rate of $2.70 applicable over the Missouri Pacific was unreasonable because, and to the extent, it exceeded a rate of $2.65 effective via the Illinois Central and the Mobile & Ohio. The difference in the rates resulted from the disregard by the Illinois Central and the Mobile & Ohio of the rule for the disposal of fractions. The examiner called attention as justification for his recommendation to the fact that the Commission has repeatedly held that the mere fact that the rate between two points is higher over one route than over another does not establish that the higher rate is unreasonable.

## CHARGES ON WHEAT

Dismissal of the complaint is recommended by Examiner F. W. McM. Woodrow in a tentative report on No. 11573, the Northern Grain and Warehouse Company vs. Spokane, Portland & Seattle Railway Co. et al., on a proposed finding that charges on a carload of wheat moving interstate from Sherar to Portland, Ore., in May, 1920, were not shown to have been unreasonable or otherwise unlawful.

The complainant shipped 46,948 pounds of wheat in an 80,000-pound capacity car and charges were collected on the basis of the applicable joint commodity rate of 18 cents per 100 pounds and a minimum of 80,000 pounds. The complainant had ordered a 40,000-pound capacity car, but the Oregon Trunk supplied the 80,000-pound car.

"The record shows that complainant made several shipments where specific capacity cars were ordered and charges were assessed on them upon the basis of the minimum applicable to the capacity of the car furnished and that the present case is a test case to obtain the proper construction of the applicable tariffs," the examiner said.

"The Commission should find that technically no carrier's 'convenience clause' was in effect at the time the shipment moved, since the Oregon Trunk was not a party to S. P. & S. 358; that it is unreasonable for the Oregon Trunk not to have had or to have in effect such a clause; that if this clause had been made applicable by rule 57, S. P. & S., I. C. C. 269, supplement No. 18 thereto, would not have made it inoperative; however, in the circumstances, it would not have been applicable to the shipment involved; and that the charges collected thereon based upon the 80,000-pound minimum are not shown to have been unreasonable or otherwise unlawful. The complaint should be dismissed. An order requiring the establishment of the carrier's 'convenience clause' does not seem necessary, as the Oregon Trunk, no doubt, will immediately provide for its establishment."

## COMBINATION RATE ON SHINGLES

On a finding that a combination rate of 55½ cents paid by the complainant on shingles from Kyro, Wash., to Council, Idaho, shipped in August, 1918, was not shown to have been unreasonable, Examiner F. W. McM. Woodrow proposes that the complaint be dismissed in No. 11599, Council Lumber Co. vs. Director-General, as agent, et al. The complainant contended that a reasonable rate would have been 52½ cents, and that the reasonable rate for the future would be 52½ cents plus the 25 per cent increase allowed under Ex Parte 74, or 65½ cents, instead of the present rate of 69½ cents.

The complainant contended that under General Order No. 28 the Director-General, as interpreted by his freight rate authority No. 10 of July 2, 1918, intended that the 5-cent maximum increase applicable to lumber and lumber products should be applied to the whole rate and not to each factor of the combination.

"Freight rate authority No. 10 authorized carriers under federal control to apply the maximum increases granted in order No. 28 to the total rates instead of to each factor of the rates and instructed them to make such rates effective by filing tariff supplements with the Commission," the examiner said. "The fact that it may appear that it was the intention of the Railroad Administration to modify these rates is not sufficient reason to support a finding of unreasonableness. Pine Plume Lumber Co. vs. Director-General, as agent, 59 I. C. C. 371."

Examiner Woodrow also recommended dismissal of the complaints in No. 11601, Potlatch Lumber Co. vs. Director-General, as agent, et al., and No. 11597, F. R. Woodbury Lumber Co. vs. Director-General, as agent, et al., the same principle being involved as in the Council Lumber Company case.

The complainant in No. 11601 sought reparation and reasonable rates on brick from Potlatch, Ida., to Genesee, Ida., and on coal between points in Washington, the allegation being that the rates were unreasonable because they exceeded those in effect June 24, 1918, plus a single increase based on the total rates.

In No. 11597 the complainant sought reparation and reasonable rates on coal from Hiawatha, Utah, to points in Washington, the underlying allegations being the same as in the other cases referred to above.

The position of the Commission in cases of this character is that no matter what the intention of the Railroad Administration was with regard to double increases the question to be decided by the Commission is whether the rates were reasonable, and that the fact Freight Rate Authority No. 10 said the maximum increase should be applied to the through rate and not to each of the factors is not in and of itself evidence of unreasonableness.

## RATES ON DEAD RABBITS

Attorney-Examiner M. A. Pattison, in a tentative report on No. 11412, Jerpe Commission Co., Inc., vs. C. B. & Q. et al., has recommended a holding that the rates on dead rabbits, not dressed, in carloads, from points in Kansas and Nebraska to Detroit, Philadelphia and New York via the Missouri Pacific and connections to Chicago, were unreasonable and unduly prejudicial, as to the factors in the combination from Lenora and Stockton, Kans., to Chicago, because and to the extent they were in excess of 85 and 91.5 cents, the rates subsequently established. One carload from Concordia was overcharged, Pattison said.

The rabbits shipped were some of those killed in the annual drive in Kansas in 1919. The complainant asked for rates not any higher than those on dressed meat, but the carriers contended that a closer analogy would be between poultry and dead rabbits, the only analogy between rabbits and dressed meats, they said, being that both move in refrigerator cars.

## LAKE CARGO COAL RATES

It is within the competency of the Commission to order a carrier to make rates on lake cargo coal notwithstanding the fact that its traffic policy is to treat coal as coal, no matter what its ultimate destination, and to require the same rate for transportation to a given point. That is the substance of the opinion of Examiner John B. Keeler, expressed in a tentative report on No. 11559, Harlan County Coal Operators' Association et al. vs. Louisville & Nashville et al.

Keeler recommends a finding that the rate on lake cargo coal from the mines of the complainants on the Louisville & Nashville in eastern Kentucky and Tennessee to Toledo, since May 6, 1920, has been unjust and unreasonable and unduly prejudicial to the extent that it exceeded and that it exceeds or that it will exceed the rate contemporaneously maintained from mines on the Chesapeake & Ohio, Sandy Valley & Elkhorn and Long Fork railroads in West Virginia and eastern Kentucky, commonly called the Kanawha field; also that reparation be awarded.

The Louisville & Nashville contended that the Commission has not the power to require it to establish lake cargo coal rates; that it has never established rates to Toledo or elsewhere on the lake cargo basis and that the rate of $1.55 canceled May 6, 1920, was established by the Railroad Administration. It took steps as soon after its property was restored to it to get rid of that lake cargo coal rate of $1.55 per ton and the substitution therefor of the rate of $1.90 applicable on coal for consumption at Toledo or for all-rail transportation beyond. In answer to that Keeler quoted the cases decided by the Commission establishing lake cargo coal rates, beginning with the Boileau case, 22 I. C. C. 640, and ending with the Pitt Gas Coal Co., 37 I. C. C. 240.

Keeler pointed to the fact that the L. & N. accepts divisions on coal to Toledo, for all-rail transportation beyond, five or six cents per ton less than the lake cargo coal rate it canceled on May 6 last. Ordinarily, he said, the division a carrier accepts is not a thing to be used by a shipper to measure the reasonableness of a rate, but in a case such as this, he said, it is because, while the lake cargo coal rate is separately published, it is in effect a division out of a through rate, or a proportional, applicable only on coal intended for further movement by a common carrier.

Complainants, he said, showed that the cost of handling lake cargo coal at Toledo is less than that of handling commercial coal, and that that is an element to be considered in any attempt to find a reasonable rate, when there are comparable situations, as there are at Toledo, when coal from the complaining mines arrives in the break-up yard. Another fact brought out by the complainants is that there is a fast turn around of coal cars moving lake cargo coal. The L. & N. said that that quick round-trip movement was due in large measure to Service Order No. 10 and that results attained under priority orders should not be used in attacks upon rates which would not always be applied to tonnage on which there was a priority. The answer to that, Mr. Keeler said, was that the figures showing the fast

turn around cover long periods, antedating the issuance of Service Order No. 10.

## RATE ON STEEL SHEETS FOR JAPAN

A finding of unreasonableness and an award of reparation have been recommended by Assistant Chief Examiner Ulysses Butler, in a tentative report on No. 11357, Suzuki & Co. vs. A. T. & S. F. et al., as to the application of the domestic rate of $1.125 on seven carloads of black steel sheets forwarded from Gary, Ind., to Kobe, Japan, via San Francisco in June and July, 1919. Butler thinks the complainant should have reparation for the difference between the domestic rate of $1.125 and the export rate of 60 cents, amounting to about $1.770.

Imposition of the domestic rate was caused by a change in the destination point in the billing while the steel was in possession of the carriers. The change was made in accordance with a rule that is no longer in operation. It provided for the application of the domestic rate under conditions named. Yokohama was the original billed destination. The change was to Kobe.

In justification of the rule the carriers said it was intended and did help in preventing congestion, during the war, at Pacific ports. They said that often the destination in the foreign country was changed and that such changes frequently required changes in the routing by water. Such changes frequently required the freight to be held in the warehouses of the carriers. In this instance the ship on which the steel was to be moved to Japan touched at both points, so there was no delay. For that reason Butler thinks Suzuki & Co. should have their money returned to them.

## RATES ON NITRATE OF SODA

In a tentative report on No. 11680, King Powder Co. et al. vs. Baltimore & Ohio, Director-General, et al., Examiner John T. Money recommended a holding that rates on nitrate of soda from Norfolk and Baltimore to Middletown Junction, King's Mills and Morrow, O., points at which the complainant has mills, to have been and to be unreasonable to the extent thta they exceed 25.5 cents, subject to the increases authorized under Ex Parte No. 74, and that the complainants are entitled to reparation on shipments since June, 1918. The recommendation is based on the decision in the General Chemical Company's case (57 I. C. C. 220), in which 32 cents was found to be the reasonable rate to Hegewisch, Ill., a Chicago rate point. The points in Ohio are 87 per cent points, so the rate, allowing Baltimore and Norfolk the proper port differential, are entitled to the rate of 25.5 cents before mentioned and reparation for the difference between that figure and the rates paid.

## INDIAN VALLEY R. R. ORE RATES

In a tentative report on No. 11396, Mason Valley Mines Co. vs. Western Pacific et al., Examiner Karl K. Gartner developed a situation with regard to the Indian Valley Railroad which, in his opinion, requires an investigation by the Commission, because four-fifths of its stock, he said, is owned by the copper mining company that is the principal shipper of ore and ore concentrates to the smelter at Garfield, Utah, on a rate recently reduced 30 per cent, so that it stands at $9.70 a ton of ore valued at not more than $100 a ton.

The Indian Valley, with a haul of 22 miles, receives a division of $3.349; the Western Pacific a division of $5.789 for a haul of 630 miles and the Bingham & Garfield, for a haul of a few miles, receives 56.2 cents. The lawfulness of the division to the Indian Valley, Gartner said, has never been passed on, nor is the division to it in issue in this case. But Gartner thinks that because of the disparity of the divisions, the Commission should order an investigation inquiring into the status of the Indian Valley, in connection with its industrial railways investigation, with a view to determining whether or not the divisions received by it on ore by this proprietary carrier are proper."

The question as to the status of the Indian Valley was raised in connection with the application of the complainant for joint through rates from points in Plumas County, Cal., a distance of about 240 miles via what seems the most easily operated route over the Indian Valley, Western and Southern Pacific roads to a short road connecting with the smelter at Wabuska operated by the complainant. It desires to extend its operations by the installation of a more efficient type of smelter, at a cost of $500,000, but unless it can get some of the ore from Plumas County, California, the additional investment would not be warranted.

The Western Pacific has resisted the establishment of a joint rate to Wabuska, the only rate to which would be the locals of the different carriers, making a combination of $12.50 per ton for the $100 a ton ore.

While the Railroad Administration was in control the Pacific freight rate commitee recommended a rate of $4.70 per ton, but Director Chambers, on account of the shortness of the time allowed after that recommendation was made, declined to establish the rate, which would have been satisfactory to the Southern Pacific.

In defending the rate adjustment that gives it a main-line haul of more than 600 miles, the Western Pacific said that it made the 30 per cent reduction because it was represented to it by the Engels copper mine interests, owned by the same interests that control the Indian Valley, that the ore would not move unless there was a reduction in the freight rate.

Gartner assumed that the forces that compelled the reduction of the rate from Plumas county to Garfield to $9.70 a ton would be compelling as to a joint rate to Wabuska. Therefore, he took the Plumas-Garfield rate and made it the yard stick for recommending a rate of $3.53 to Wabuska, with rates on higher valued ore worked out on the same basis. He based his recommendation wholly on a showing that the public interest requires the development of the kind of mining that will produce the ore or concentrate which the complainant says can be produced by Plumas County, if it can get a proper rate to its nearest smelter point. The Western Pacific, among other things, said the establishment of a joint rate to Wabuska would not move any tonnage. Gartner suggested that that was an argument that cut two ways and that the Western Pacific should not, therefore, object to making the experiment.

### RATES ON BANANAS

Examiner Frank E. Mullen, in a report on No. 11565, Providence Fruit and Produce Exchange vs. Director-General, as agent, and the related case sub-number 1, W. H. Blodgett & Co. vs. Same, has recommended dismissal on a finding that the rates on bananas, in carloads, from New York lighterage points to Providence, R. I., and Worcester, Mass., had not been shown to be unreasonable or otherwise unlawful. The traffic in question was delivered to the rail carriers at Harlem River, the charges from which were higher than on traffic from Philadelphia or other points south. The complainants contended that that was a violation of the fourth section. The examiner said that the additional charge from Harlem River was for an out-of-line service, or back-haul, and not a departure from the fourth section.

### COAL TAR RATES

On the principle enunciated in the Kaw River Sand and Material Company case (that all railroads under federal control were parts of a single system), Examiner Frank E. Mullen has recommended a finding in No. 11511, Barrett Co. vs. Philadelphia & Reading et al., that a rate of 15 cents on coal tar from South Bethlehem to Gray's Ferry, Philadelphia, applied in the fall of 1918, was unreasonable to the extent that it exceeded 8 cents, a commodity rate between the same points, when the traffic was routed from the Reading point of origin to B. & O. delivery. The complainant contended that there was no reason why the Reading should make a rate of 8 cents for B. & O. delivery and a rate of 15 cents for Pennsylvania delivery, especially during federal control, and the examiner agreed with it. Mullen also recommended reparation.

### RATE ON KAINIT

In a tentative report, No. 11576, Planters' Fertilizer and Phosphate Company et al. vs. Atlantic Coast Line et al., Examiner J. Edgar Smith proposed a finding that a rate of $3.80 per net ton charged on shipments on kainit which moved in February and March, 1920, from Norfolk, Va., to Charleston, S. C., were not unreasonable nor otherwise in violation of the act.

### DEMURRAGE ON HAY

Demurrage charges on 21 carloads of hay held at Covington, Ky., on account of an embargo, Examiner John P. Money thinks, were not unreasonable nor otherwise unlawful. Therefore, he has recommended, in a tentative report, a dismissal of No. 11734, Maguire & Co. vs. Louisville & Nashville et al.

### RATES ON AUTOMOBILE RUNNING BOARDS

Examiner John A. McQuillan, in a tentative report on No. 11555, Chevrolet Motor Company of California vs. Atchison, Topeka & Santa Fe et al., proposed a finding that fourth class rates previously applicable on automobile floor, toe and running boards, wooden, from Detroit, Mich., to Melrose, Calif., were unreasonable to the extent that they exceeded the contemporaneous class A rates. He further recommended a holding that the class A rates on automobile floor, toe and running boards, wooden, untrimmed, from Detroit to Melrose were and are unreasonable, to the extent that they exceeded or exceed contemporaneous class B rates. He recommended an award of reparation.

### RATE ON AUTOMOBILE CHASSIS PARTS

In a tentative report on No. 11322, Earl C. Anthony, Inc., vs. Michigan Central et al., Examiner Henry C. Keene has recommended a finding that the rate on mixed carloads of passenger

automobile chassis parts and mixed carloads of freight and passenger automobile chassis parts from Detroit to San Francisco are unjustly discriminatory because the only difference in the traffic under consideration was the use to which the freight and passenger automobiles were to be put. Keene said it had long been held that rates could not be predicated on the proposed use of the commodities transported. He said, however, that the imposition of higher rates on passenger automobile chassis parts than on freight automobile chassis parts had not been shown to have caused damage to the complainant, wherefore he recommended a denial of reparation.

## LUMBER COMBINATION RATES

*The Traffic World Washington Bureau*

The Southern Hardwood Traffic Association has filed an informal complaint with the Commission against Supplement 8 to Kelly's Freight Tariff 228, I. C. C., U. S. No. 1, effective December 1, carrying revised rules for constructing combination rates on lumber and forest products, also containing a notice that the combination tariff would be cancelled June 1 next. The complaint, in effect, is that the carriers are adopting a policy which will leave on the shipper the burden of asking for joint or proportional rates as substitutes for combinations on which they have been shipping, notwithstanding the fact that the carriers, in the past, have always contended, the complaining association asserts, that it makes no difference to the shipper how his rates are published. The association makes the point that the average shipper, by reason of that attitude, is without the necessary information to enable him to make application for joint or proportional rates because he is not aware that he is now shipping on combinations carried in the tariff that is to be cancelled next June. The association thinks that that is not a fair way for the railroads to proceed for the elimination of combinations.

The association, through J. H. Townshend, its secretary-manager, in a letter addressed to the Commission, has made the additional point that the rules in the Kelly supplement, as interpreted by him, make increases of more than 33⅓ per cent and are out of harmony with what Traffic Director Hardie said they should be. He said he had not had an opportunity to make a complete analysis, but that the tests he had made had developed a situation which he felt should be called to the attention of the Commission because, if continued, it will be a severe handicap to shippers at Potosi, Mo., Blytheville, Wilson, Walnut Ridge, Marked Tree, Lepanto, Jonesboro and Nettleton, Ark., and Fredericktown, Mo. In his letter to the Commission he said:

"Shippers in the producing territory represented by the stations mentioned are in direct competition with shippers at nearby points on the same or other lines where through rates have been maintained, and this further advance in the rates imposes an additional handicap on their business. Perhaps this situation can best be understood by calling attention to the adjustment in effect from Blytheville, Ark., to Detroit, Mich. Through rates are published via the Cotton Belt, while combination rates apply via the Frisco. The through rate in effect on August 25, 1920, via the Cotton Belt, was 29½ cents per hundred pounds, and which was the same as the combination rate available via the Frisco. However, the present through rate via the Cotton Belt, which is arrived at by increasing the August 25 rate 33⅓ per cent, is 39½ cents, while the rate in effect via the Frisco on November 30, 1920, was 40 cents; and the rate which became effective December 1, 1920, is 41 cents. It is true that the combination basis created a discrepancy of one-half cent in the rates effective August 26, 1920, but the new supplement further increases that discrepancy by making it a cent and a half. As we have pointed out, this situation is also true of the opposite local points on these various lines, from which a group adjustment has heretofore been made, whether that result was effected under through rates or under combination rates. The importance of the discrepancies in the rates at the junction points is also emphasized by reason of the fact that the inbound movement of logs under transit arrangement ties up the outbound movement of lumber to the same line, regardless of whether another line has a lower rate from the junction.

"We have been unable to secure any information as to whether the supplement which became effective December 1 will be subject to any further revisions, and we have been unable to secure any satisfactory explanation as to why that supplement does not conform to Director Hardie's announcement of the changes that would be made.

"The condition of the labor industry at the present time is such that these additional increases in the rates represent a very real handicap to the movement of business, and since it appears that they are not properly authorized, we would like to inquire whether any relief can be secured through the commission's informal docket.

"If consistent, we would also be glad to receive any information as to why the tariffs have not been revised in accordance with Director Hardie's announcement.

"In presenting the immediate rate situation to the Commission, we cannot refrain from calling attention to the notice appearing on the title page of Supplement 8 to Agent Kelly's I. C. C., U. S. No. 1, announcing the unqualified purpose of the carriers to cancel the combination tariff on June 1, 1921, also apparently placing upon the shippers the entire burden of bringing to the attention of the carriers all cases in which through or proportional rates should be established, together with more or less detailed information as to the movement, etc.

"We fully appreciate the evident desire of the carriers to get away from the combination tariff, and which we believe has the approval of the Commission. We are further of the opinion that this would be a good thing from the standpoint of the shippers also, provided it is done fairly and without imposing unnecessary and improper advances in certain rates on forest products which happen to be in the combination, through no fault of the shippers, but because the carriers themselves have not desired, or have failed, to publish through rates. It is a fact that there is as much or more movement on a large part of the combination rates on forest products now in effect than there is on a great many of the published through rates. The fact that some of the rates today are on combination, while others are joint through rates, is a matter absolutely beyond the control of the shippers and one which represents the desire of the carriers to maintain combination rates, or their failure to provide through rates. It may not be out of place to mention that the method of constructing a rate is a matter that ordinarily does not come to the attention of the average shipper; in fact, it is of record before the Commission that the shippers have frequently been met by the carriers themselves with the contention that shippers are not interested in how a rate is made, and that the only thing in which they are concerned is the total.

"While it will be our intention to co-operate with the carriers in developing the business moving on combination, and which is entitled to the protection of the proper through rates, we are somewhat surprised at the curt and unqualified announcement on their part that the combination tariff will be cancelled upon a certain specified early date, without any evidence that the carriers will develop or even assist in developing those cases in which combination rates now apply and are entitled to protection. This is somewhat difficult to understand, especially in view of the fact that the carriers are generally in better position than the shippers to determine these cases, particularly where such a commodity as lumber is involved, which moves steadily and in volume all the year round. We shall certainly expect the co-operation of the carriers to the fullest possible extent in working out this situation, and if that has not been given, or the rates entitled to protection are not properly covered by the publication of through rates or proportional rates, we shall bring the matter to the attention of the Commission again in the shape of a formal request for suspension of the cancellation of the combination tariff now announced for June 1, 1921."

## SUSPENDED TARIFFS

*The Traffic World Washington Bureau*

The Commission December 14 in I. and S. No. 1261 suspended tariffs filed by carriers and agents of carriers, purporting to put in rates in conformity with the Commission's fourth section order directing them to remove a long and short haul departure at Maplewood, a point five miles north of Nashville, which could have been done by reducing the rate at Maplewood. Instead they filed tariffs to which protests were made by Jacksonville, Fla., Montgomery, Birmingham, Chattanooga, and other cities in the southeast. The protestants intimated that the order to remove a violation at a little local station north of Nashville had been used to propose another increase in many of the rates in the southeast. The explanations filed in justification of the proposed increases were not satisfactory, hence the suspension order.

Another suspension ordered at the same time time (I. and S. No. 1260) was made on the theory that the southeastern roads were using the Commission's decision in the Memphis-Southwestern investigation (No. 9702) as a stepping stone to higher rates in the southeast than were allowed in Ex Parte No. 74. In that case rates east of the Mississippi were ordered to be readjusted in accordance with block or group suggestions of the Commission. The tariffs as checked by the Commission are said to show rates considerably in excess of what the Commission's decision allows.

### BOND ISSUE PROPOSED

The Indiana Harbor Belt Railroad Company has applied to the Commission for authority to issue $579,000 of its 5 per cent 50-year general mortgage gold bonds of 1907, due July 1, 1957. The applicant proposes to pledge the bonds for promissory notes to be given to the Secretary of the Treasury of the United States for a loan of $579,000, which will be applied on the cost of additions and betterments to existing equipment and additions and betterments to ways and structures. The New York Central and Michigan Central, in separate applications, ask authority to guarantee two of the notes to be given to the government by the Indiana Harbor Belt.

# Carriers and Shippers Get Together

(Special to The Traffic World)

New York, N. Y., Dec. 14.—The conference between carriers and shippers held in this city today as a result of resolutions adopted at a conference of shippers in Chicago, October 22, at which certain things in the attitude of the carriers were seriously objected to, and consideration of these resolutions at the New York meeting of the National Industrial Traffic League, at which carriers were in attendance bearing olive branches, was a complete success from the point of view of those who desire a spirit of co-operation between carriers and shippers and a working basis for that co-operation. The conference was between a committee of the Traffic League, appointed at its New York meeting, and representatives of the carriers of the country. Those present reported that the atmosphere was everything that could have been desired. The points at issue were gone into in detail and an agreement was reached for permanent general committees of the League and the railroads to confer on matters of general importance in the future.

W. H. Chandler, president of the League and chairman of its special committee appointed for the December 14 conference, presided at the conference. The others present representing the League were as follows: L. C. Bihler, traffic manager, Carnegie Steel Company; W. H. Day, Jr., managing director, Lynn Chamber of Commerce; J. M. Belleville, traffic manager, Pittsburgh Plate Glass Company; J. C. Lincoln, traffic manager, Merchants' Association of New York; H. D. Rhodehouse, traffic manager, Youngstown Chamber of Commerce; R. S. French, general manager, National League of Commission Merchants; W. S. Creighton, traffic manager, Charlotte Shippers' & Manufacturers' Association; U. S. Pawkett, traffic manager, San Antonio Frt. Bureau; Herman Mueller, traffic manager, St. Paul Association; R. M. Field, traffic manager, Peoria Association of Commerce; Geo. P. Wilson, commissioner of transportation, Philadelphia Chamber of Commerce; C. D. Mowen, commissioner, Fort Smith Traffic Bureau; J. H. Beek, executive secretary, the National Industrial Traffic League.

The carriers' representatives were as follows: G. H. Ingalls, V. P., New York Central Lines; G. D. Dixon, V. P., Pennsylvania System; Archibald Fries, V. P., Baltimore & Ohio R. R.; J. A. Middleton, V. P., Lehigh Valley R. R.; P. J. Flynn, V. P., D L. & W. R. R.; T. C. Powell, V. P., Erie Railroad; D. G. Gray, V. P., Western Maryland Ry.; B. Campbell, V. P., N. Y. N. H. & H. R. R.; J. E. Dalrymple, V. P. (represented by H. C. Martin), Grand Trunk Ry. System; W. C. Maxwell, V. P. (represented by C. H. Stinson), Wabash Railway; B. E. Morgan, T. M. (represented by E. Kluever), N. Y. C. & St. L. R. R.; L. J. Spence, director of traffic, Southern Pacific Co.; E. Chambers, V. P., A. T. & S. F. Ry.; C. E. Spens, V. P., C. B. & Q. R. R.; C. Haile, V. P., M. K. & T. Ry.;C. R. Capps, V. P., Seaboard Air Line Ry.; F. B. Bowes, V. P. (represented by W. M Rhett), Illinois Central R R.

Following is the official report of the conference as prepared by J. Gottschalk, secretary of the traffic executive committee, eastern territory:

"This conference was arranged pursuant to an understanding reached at meeting of representatives of eastern carriers and the executive committee of the National Industrial Traffic League, held at the Waldorf-Astoria Hotel, November 17, looking to the adoption of such measures as might be necessary to insure co-operation between carriers and shippers.

"Assurance was given on behalf of the carriers as follows:

"1. That there is no preconceived or concerted purpose of the carriers to change rates, rules, regulations or practices for the sole purpose of obtaining increased revenue in addition to that which has been found by the Interstate Commerce Commission, in Ex Parte 74, to be necessary.

"2. That rate committees and tariff bureaus will be instructed to devote their first and preferred attention to readjustments contemplated by the carriers' recent applications to the Interstate Commerce Commission and by the Commission's decision in Ex Parte 74, to the prompt publication in regular tariff or supplement form of the rates authorized thereunder, and to prompt decisions on the applications of shippers for readjustment of old rates and establishment of new rates.

"3. That the responsible traffic officers of the carriers will undertake to review and carefully consider other changes of rates, rules, regulations and practices initiated or recommended by the rate committees, with a view to forestalling any such changes as may be inopportune.

"4. That as to classification matters, the same consideration will be given.

"Understanding was reached as follows:

"1. That dockets, including classification dockets, will be amplified to express the purpose of docketing the subject to the extent necessary to provide a reasonable understanding of the subject. Upon application from an individual shipper he will be given full information as to the particular subject in which he is interested.

"2. That as to strictly local questions the National Industrial Traffic League does not ask nor expect that conference will be had between committees representing the railroads and committees of the League, but that the League asks the opportunity of conference on matters of national scope or of general application throughout a territory, and that the League will appoint a general committee which will be available for prompt conferences on these national or territorial matters with a corresponding general committee of railroad traffic executives, which will be appointed by the proper authorities.

"Announcement was made on behalf of the National Industrial Traffic League as follows:

"1. That the League insists upon transacting its business with the traffic executives of the railroads who are responsible for the maintenance of proper relations between the carriers and the public.

"2. That as to demurrage and other operating matters of national scope or of general application affecting charges to be paid by the shippers, the traffic executives act as the point of contact with the American Railway Association.

"3. That as to accounting matters such as accuracy of billing, claims of all kinds, and any other matters in which the shippers are interested as distinguished from the accounts between the carriers, the traffic executives act as the point of contact with the Association of Railway Accounting Officers.

"It was resolved that it is the sense of this meeting that there should be full and free discussion between the shippers and the carriers looking toward a settlement of pending or prospective differences prior to the filing of formal complaints before the Interstate Commerce Commission, and the interests here represented agree to use their influence to this end.

"That a copy of these expressions be sent to the Interstate Commerce Commission.

"Demurrage Charges.—It was understood that the League committee and that of the American Railway Association will endeavor to reach an agreement, and if this cannot be accomplished the matter will be brought before a conference of the general committees above provided.

"Reconsignments Rules.—It was concluded that a committee consisting of six members, three members each representing the carriers and the League, confer with a view to an adjustment of pending differences. In the event these differences cannot be composed, the matter to be discussed at an informal conference with the Interstate Commerce Commission.

"Car Spotting.—It was understood that the special committee of eastern lines would communicate further with the special committee of the National Industrial Traffic League with a view to further joint consideration of the subject.

"Penalty Charges.—Passed without action, it being understood that Agent Fairbanks will receive instructions from individual lines as to cancellation of penalty charges, except as to lumber, on which the penalty charge is to be continued.

"Classification Matters.—Communication from Chairman Powell of the executive committee on consolidated classification to President Chandler of the National Industrial Traffic League, dealing with classification matters, was read, and it was understood that copies would be distributed by the National Industrial Traffic League to its members.

"Approval of Interstate Commerce Commission Before Advances Are Made.—Reference was made to a bill introduced in the House of Representatives, as shown in the Congressional Record of December 7, having in view the re-enactment of the Smith amendment to the interstate commerce act (section 15).

"It having developed that the request for this legislation had originated in the South, it was understood that members of the National Industrial Traffic League representing southern and southwestern interests would recommend to the Southern Traffic League and Southwestern Traffic League that in view of co-operative measures formulated at this meeting, such legislation will be unnecessary.

"Import and Export Committee.—Attention being directed to the desirability of securing co-operation between shippers and carriers with respect to export and import traffic, as well as domestic shipments, it was understood that when the export and import committees in the several territories have been organized by the carriers, the export and import committee of the National Industrial Traffic League will co-operate with such committees in the same manner as the demurrage committee of the League works with the demurrage committee of the American Railway Association.

"Passing Reports and Transfer Records.—Passed without action, it being stated that the various lines are restoring the arrangements for furnishing of this information as rapidly as possible.

"Off-Line Agencies.—No action was taken, it being stated

by the carriers that they are re-establishing their off-line agencies to the extent that conditions justify.

"Chicago Shippers' Resolutions.—The resolutions adopted at conference of western shippers on October 22, as shown on page 907 of The Traffic World of November 13, were discussed, and it was the general view that the adoption of the arrangements above shown will remove the difficulties complained of in such resolutions.

"Transit Privileges.—In response to question, it was stated by the representatives of carriers that instructions had been issued to withdraw from consideration propositiins looking to the cancellation of transit privileges which had been presented to the several territorial committees.

"'Order Notify' Bills of Lading.—Attention was directed to recommendation of the National Association of Credit Men that the unnecessary use of the 'order notify' bill of lading be discouraged.

"It was understood that the National Industrial Traffic League would circularize its members, urging that the use of the 'order notify' bill of lading be restricted to cases of actual necessity."

### Lumber Penalty Charge

There is one portion of the above report of the proceedings which Executive Secretary J. H. Beek, of the League, says would seem to be unfortunately or not fully enough stated. That is the part referring to penalty charges.

"It would appear," said Secretary Beek, "that the League had acquiesced in the continuance of the penalty charge on lumber. Had the entire discussion been reported a different impression would have been created. The facts are these: When that item was reached on the docket submitted by the League in advance Mr. Chandler stated that the League had gone on record, at the Louisville meeting, as opposed to penalty charges and that a great many of our members had written him protesting against the penalty charge on lumber. Mr. Chandler further stated that he understood that new tariffs had been or would be issued, extending the penalty charge on lumber beyond January 1, the date of expiration of the charge in tariffs now in effect. The carriers stated that all penalty charges would be canceled, except on lumber, and that they could not take it off lumber because it was acquiesced in in the first instance by a majority of the lumber people, who still insisted on its retention and, furthermore, the minority lumber interests had filed a complaint before the Commission and that it was desirable that the Commission receive all the facts and make a formal decision, which was the only way, that the row on among the lumbermen could be settled. With this situation so clearly put before us there was nothing that our committee could do in the matter.

"My own opinion is that if the lumber association had not filed a formal complaint, there might have been a chance to accomplish something by negotiation. As it now stands I think the case must be fought out before the Commission by the conflicting interests.

"The conference was a very satisfactory one. Our committee is well pleased. It looks as though we can and will get together. Indeed, we have got together theoretically and we have plans to make our future relations very practical, and we believe, mutually helpful. Conference committees are to be appointed. The attitude of the railroad traffic executives was about all that could be desired. There was a disposition to give and take.

"The minutes of the proceedings of course do not reflect the atmosphere of the conference. That must have been seen and felt to be fully appreciated. It is significant that every member of our committee was immensely pleased and thoroughly satisfied that every one was acting in good faith. The situation, therefore, is encouraging.

"Of course, the proceedings do not show the discussion. That is to be regretted. The full and free interchange of views—the direct questions asked and answered—would, if reported, convey something of what I have called the 'atmosphere' of the conference."

### Docket of the League

The following had been sent to Mr. Gottschalk by J. H. Beek, executive secretary of the League, in advance of the conference:

"I am giving you below a list of subjects which our committee desires to take up at the conference with the railroad executives on December 14.

"Demurrage Charges.—As explained to the executives at the New York meeting, it is the belief of the League committee that, in view of changed conditions, there is no longer any justification for imposing the war time demurrage charges which were submitted to the Interstate Commerce Commission by a joint committee representing the American Railroad Association and the National Industrial Traffic League. This phase of the subject is submitted for consideration. There are certain modifications of the rules which were agreed to as being reasonable, irrespective of whether higher demurrage charges should prevail or not. We shall request that these be published as a part of the uniform demurrage code.

"Reconsignment.—We shall request that the reconsigning rules be modified to agree with the original proposal submitted by the carriers in I. and S. Docket No. 1050. This matter has already been referred to the Interstate Commerce Commission with a request for a joint conference with the committee representing the carriers. It appears, however, that the Commission referred this matter to a committee that has been discharged and a request has been made that the matter be held in abeyance until we have an opportunity to discuss the subject with your committee. Briefly, the subject embraces the decision of the Commission in Docket 10457 (a) to cover the entire country instead of New England territory alone and (b) the modification of the rule applying combination of local rates on shipments that have reached first destination.

"Car Spotting.—This is a subject upon which the carriers have been furnished with a copy of the League report. We shall ask that this matter be abandoned by the carriers.

"Average Agreement.—Information has reached the League Demurrage Committee that the carriers are again proposing the elimination of the average agreement. We desire information on this subject.

"Penalty Charge.—The League has gone on record against the imposition of penalty charges in addition to demurrage charges and the League committee desires to discuss this with the executives with a view to having a definite policy determined with respect to this practice.

"Classification.—The matter of publicity in connection with correspondence passing between Mr. Powell of the Erie Railroad and the Interstate Commerce Commission respecting proposed changes in consolidated classification ratings. The League committee desires an expression as to the attitude of the carriers with respect to other changes.

"Approval of Commission Before Advances Are Made.—There is a well-defined movement on foot (to which the National Industrial Traffic League is not a party) to have the transportation act amended, so as to provide that carriers should again be required to get permission of the Commission before publishing advances—in other words, a re-enactment of the Smith amendment. The League committee desires to discuss this with the executives.

"Import and Export Committee.—Whether a working agreement can be established between the import and export committee of the railroads and a similar committee of the League with a view to agreeing upon changes in rates, charges and practices before being published.

"Passing Reports—Transfer Records.—The matter of re-establishing transfer records so as to enable shippers as well as other carriers to obtain information regarding the movement of freight that is delayed or which may go astray.

"Off-Line Agencies.—Discussion as to the restoration of off-line agencies to assist shippers.

"Chicago Shippers' Resolutions.—At the annual meeting of the League, the resolutions passed by the shippers in Chicago, October 22, requesting the League to take action thereon was referred to the special committee for discussion with the carriers. This resolution has been printed in The Traffic World and has been furnished to certain of the railroad executives. It is desired to discuss this subject.

"Transit Privileges—Icing—Perishable Freight Practices.—This is a subject that might be embraced under the heading of the Chicago shippers' resolution, but specific complaints have been made respecting proposals either to increase very materially the charge for transit privileges or withdrawal of them altogether. Many of these subjects have been outlined in a letter written by Mr. Newsome, president of the American Fruit and Vegetable Shippers' Association, to railroad executives, and are embraced in a bulletin sent out by the secretary of that organization to its members under date of November 18; also the increased charge proposed in Western Trunk Line Docket 637, which proposes to double the charge for stopping cars in transit, partly to unload or to complete loading.

"This will give you in a general way what we have in mind at this time. It may be that the carriers will have some suggestions to make or that our committee may desire to take other subjects up. We feel that the committees will make better progress by not limiting the discussion strictly to a docket prepared in advance for the first meeting at least. It will be the desire of our committee to have determined some method of procedure in future with a view to reducing the complaints before the Commission by ironing out differences between the shippers and carriers to as great an extent as possible by conferences between our respective committees.

"It is our understanding that the appointment of these committees is for the purpose of establishing a regular point of contact between the shippers and the carriers, with a view to avoiding hostile public criticism and friction as a result thereof."

### C. M. & St. P. LOAN

The Commission has approved a loan of $25,340,000 to the Chicago, Milwaukee & St. Paul Railway Company for maturing indebtedness.

# INTRASTATE RATE ARGUMENTS

*The Traffic World Washington Bureau*

Argument in the intrastate rate cases of Utah, Illinois, Florida, Nebraska, Michigan, Indiana and Ohio was begun before the Commission December 13. Freight and passenger rates are involved in the Utah, Florida, Nebraska, and Indiana cases, while passenger fares and passenger train service charges are involved in the Ohio case. The Illinois case involves only freight rates, as the passenger phase of that case has been disposed of in favor of the railroads. Passenger fares only are at issue in the Michigan case.

The Utah case was taken up first by the Commission. The Utah commission authorized percentage increases in intrastate rates and charges equivalent to those fixed by the Commission in Ex Parte 74 with the exceptions that it denied increases in ore and coal intrastate rates and stipulated that passenger fares should not be increased 20 per cent in instances where those fares were more than 3 cents a mile at the time the order was made.

J. G. McMurry, of counsel for the carriers, made the principal argument in behalf of the railroads operating in Utah. H. A. Scandrett, also of counsel for the railroads, made a brief argument. H. W. Prickett appeared for the Chamber of Commerce of Salt Lake City and John E. Benton, of the National Association of Railway and Utilities Commissioners, argued briefly for the Utah commission.

Unless the Utah intrastate fares and rates in issue are raised by the same percentage amount that the interstate fares were increased, the attorneys for the railroads said, the result would be that the railroads operating in that state would fall short of earning the contemplated return of 6 per cent on the aggregate valuation of the carriers' property by approximately $2,000,000 annually.

Counsel for the carriers said there had been injected into the case some matters that, strictly speaking, were collateral, referring to whether or not the coal rates in Utah were unfairly related to interstate coal rates and whether or not it was possible to raise the ore rates in Utah without destroying the mining business. They urged that the intrastate rates be increased and that then, after investigation, such adjustments could be made as dictated by business and judgment.

Walter Fitch, appearing for the Chief Consolidated Mining Company of Utah, made a statement to the Commission to the effect that an increase in intrastate rates on ore as asked by the carriers would result in his company being unable to operate at a profit. Mr. Benton contended that the record disclosed that the carriers were making a profit on the intrastate rates and in some instances that they were getting more out of the intrastate rates than the interstate rates.

Ben B. Cain, of the American Short Line Railroad Association, appearing for the Salt Lake & Utah, an electric road, asked that the passenger fares of that road be placed on a parity with the rates of the steam trunk lines.

Affirming that the Illinois commission has made many efforts in good faith to carry out the intent of the Commission as set forth in its report on Ex Parte No. 74, M. T. Culver, representing the Illinois commission, in his argument on the Illinois Intrastate Freight Rate case, at the afternoon session of December 13, came near accusing the railroads of bad faith in preparing figures showing losses they have suffered by reason of the Illinois commission's failure to advance rates forty per cent.

"Figures do not lie," he said, "but liars sometimes figure. The railroads in their supplemental brief used figures purporting to show that even if the rates had been advanced 35 per cent as the Illinois Commission has ordered, the maximum scale would hold down the revenue to an alarming extent. The figures were put in without opportunity on our part to cross examine the men who prepared them or to know how they obtained them. We think the Commission should afford us an opportunity to cross examine. H. M. Slater, the rate expert for the Illinois commission, in his time, will point out a few of the obvious errors detected by him since Friday night when the figures were placed in his possession."

R. V. Fletcher, attorney for the Illinois Central, who presented the main argument of the railroads in favor of a forty per cent increase in intrastate rates, said that there was no bad faith on the part of the railroads in presenting figures showing that the railroads, by reason of the failure of the Illinois commission to bring intrastate rates up to the level of the interstate, have lost between $3,000,000 and $4,000,000. He said the Commission allowed the Illinois authorities to put into the record of this case, the order entered by it, allowing an increase in interstate rates of 35 per cent to take the place of the 33 1/3 per cent increase allowed soon after the report in Ex Parte No. 74 was issued. He said the railroads had merely taken the increase of 33 1/3 per cent that the Illinois commission has allowed to show what losses the railroads have suffered by reason of the failure of the Illinois commission to allow an increase of 40 per cent. They also pointed out the loss that would have befallen them had the increase been thirty-five per cent, as allowed in the report of the Illinois body, but which has not been made effective because the operative date of the order has been postponed to January 15.

Mr. Fletcher, in his discussion, went over the facts with regard to the Illinois commission's handling of the matter and the law as construed by the Commission in regard to passenger fare case, which construction the Illinois commission has not followed in dealing with freight rates.

R. M. Field for the Illinois District Traffic League and Illinois Manufacturers' Association said he did not care to discuss the legal phases, or even to mention the question of the relative authority of the federal and state bodies, but merely to point out that, in the estimation of shippers, it is necessary that some workable basis be reached in a state where the east, the west, and the south come together with their conflicts in classification and varying percentages of increases decreed by the federal body. He said the eastern railroads were inconsistent in their efforts to have the whole state of Illinois made part of their territory, because seventy-five per cent of the traffic is carried by railroads not in the eastern district.

"With a thirty-five per cent increase in rates," Mr. Culver said, "the railroads would earn 6.04 per cent on the value of their property in Illinois devoted to transportation. The law allows them only 6 per cent."

In pointing out what he said were the errors of the railroad accountants, Mr. Slater said that of 37 items on the first page of the exhibit of the Burlington, used in preparing the figures in the supplemental brief of the carriers, there are 22 errors. The Illinois commission's maximum scale, he said, is not credited, in one instance, with giving the carriers an increase in revenue, although he said, there are many instances in which it does give them better than the railroads claimed.

Messrs. Slater and Field pointed out many instances in which they said the Illinois commissioners have granted increases in grain and other rates so as to remove discriminations against interstate commerce. Mr. Slater pointed out that the Commission's own order puts a fringe of places around Illinois taking increases of 40 per cent, followed at the next more distant point by rates increased only thirty-five per cent.

In his discussion of the Illinois freight rate case at the afternoon session of December 13, Mr. Fletcher said that the discrimination against interstate commerce was obvious on two points—namely, the inability of the carriers to obtain the revenue the federal Commission said they were entitled to receive and the ability of Illinois shippers to distribute their products on lower rates than their competitors in Indiana.

Answering Mr. Fletcher, Mr. Culver suggested that in listening to him, one might infer that Illinois was surrounded by Indiana, while the fact was that competitors of Illinois shippers in Wisconsin, Iowa and Missouri shipped on increases of rates amounting to only 35 per cent over the level in effect prior to August 26. He said that discrimination, if it existed at all, was to be found only at a few small border points, but just beyond that fringe of border points were points to which Indiana shipped at an increase of only 35 per cent and from some parts of the country at a smaller increase than that; and that such discriminations were the effect of the orders of the federal regulating body. He pointed out that the orders of the Illinois commission, issued in an effort to carry out in good faith the ideas of the Commission, resulted in discriminations against intrastate business in Illinois, which was brought in from other territories on an increase of only 33 per cent. He pointed out that as soon as the railroads called attention to the fact that grain moving via Cairo and East St. Louis was getting out of the state at a lower rate than from St. Louis and upper Ohio River crossings, the Illinois commission raised them. In the case of coal moving from points in Illinois to Rockford, it made increases that had the result of allowing Indiana coal to move at lower rates, while the orders of the federal Commission allowed coal from Kentucky to come into Illinois on a smaller increase than the Illinois commission has put upon Illinois coal.

Mr. Slater went into great detail in rates in which Illinois shippers, in figures at least, were at a disadvantage in comparison with shippers into Illinois on rates made by the federal Commission. He said that, in the matter of cement rates, Mason City shipped into Illinois on a 35 per cent increase, while the carriers suggested that Illinois shippers of cement ship into Iowa on a 40 per cent increase, and the shipper from Buffington, Ind., pays an addition of only 33 per cent on the same scale.

Commissioner Daniels showed great interest in the cement rate situation because he has had supervision over the preparation of rates on cement. Answering questions by Mr. Daniels, Mr. Slater said he had not any fault to find with the abolition of district No. 1 and the extension of district No. 2 to cover Illinois, but he desired to point out the effect of the Commission's orders making increases in rates by varying percentages.

Argument in the Illinois intrastate freight rate case was concluded before the Commission December 14. R. W. Ropiequet, appearing for the Illinois coal interests, argued that the state commissions retained jurisdiction of the reasonableness of intrastate rates, though the federal Commission might have the authority to put in advanced interstate and intrastate rates

in a given territory. He said if the intrastate rates were reduced by the state commissions, the record would have to show that the interstate rates were reasonable before the Commission could exercise its power over the intrastate rates. He also asked that the Commission enforce that part of Ex Parte 74 which directed the carriers to adjust the coal rates on prevailing rate group adjustments.

S. H. Cowan made an appeal for the reduction of rates on live stock and agricultural products. He said the farmers and live stock raisers faced bankruptcy under the present level of rates.

The Florida intrastate rate case was argued next. Frank Gwathmey, of counsel for the carriers, said it could not be estimated what the loss to the railroads would be because of the order of the state commission prescribing an increase of 25 per cent on the basis of rates in effect June 24, 1918, or prior to the general rate increase of the Director-General which became effective June 25, 1918.

James E. Calkins, attorney for the Florida commission, declared that the railroads operating in that state had ignored the order of the state commission, the effective date of which was October 1. He also objected to a statement made by Mr. Gwathmey that the orders of the Florida commission were without effect unless backed up by an order of court, declaring that was not true. He said the Florida carriers should have put in the rates ordered by the state commission and kept them in effect until the Interstate Commerce Commission ordered otherwise. Since the rates ordered in by the state commission had not been put into effect, he asserted, the federal Commission had no jurisdiction in the case. He said he had brought mandamus proceedings in the Supreme Court of Florida to compel the railroads to obey the order.

The Florida commission's order was in two parts. Up to October 1 it authorized percentage increases equal to those in Ex Parte 74. On that date, however, the order provided that an increase of 25 per cent based on the rates in effect June 24, 1918, should be applied. Most of the railroads have been charging the rates as increased before October 1.

The railroads operating in Nebraska are losing revenue at the rate of $1,253,370.09 annually because of the order of the Nebraska commission authorizing an increase of 25 per cent in freight rates with certain exceptions, while the Interstate Commerce Commission granted a 35 per cent increase on interstate traffic in that territory, Bruce Scott, of counsel for the carriers, informed the Commission in argument in the Nebraska intrastate rate case.

Counsel for the railroads argued that the Nebraska commission had advanced "an entirely novel theory so far as the regulation of railroad rates is concerned," in its opinion in the Nebraska case.

"The decision that a 25 per cent increase is sufficient is based upon the theory that the transportation act, 1920, has authorized state commissions to consider the interstate and intrastate operations of carriers within its borders in an entirety and to establish a new measure of reasonableness of intrastate rates," Mr. Scott contended.

"What the Nebraska commission did was this: It attempted to carve out of the railroad group established by the Interstate Commerce Commission in Ex Parte 74, known as the Western District, that part which lies within the borders of the state of Nebraska. Then it attempted to readjust the statistics reflecting railroad operation and property value utilized by the Interstate Commerce Commission for the Western district so as to make an ostensible showing for that part of the Western District which was included within the confines of the state of Nebraska. Without discussing the method adopted to arrive at this ostensible showing, which method is open to considerable criticism, suffice it to say that neither the Nebraska laws nor the laws of the United States warrant any such procedure."

Defense of the order of the Nebraska commission was made by H. G. Taylor, member of the commission, and Hugh La Master, appearing for the attorney-general of Nebraska. Mr. La Master questioned the constitutionality of the transportation act on the ground that Congress could not delegate to the federal Commission the power claimed under that act.

Argument in the Ohio intrastate rate case, which involves passenger rates, excess baggage rates, milk and cream rates, and the Pullman surcharge, was not extended, N. S. Brown, for the carriers, and E. E. Corn, for the state, making brief statements. The carriers operating in Ohio have estimated that they will lose $5,000,000 annually because of the lower intrastate rates.

Mr. Corn asserted that the record in the case contained no reference to economical management on the part of the carriers or that the expenditures for maintenance were reasonable. He argued that the Commission had no authority under the act to make state-wide orders removing discrimination against interstate commerce.

The carriers in Michigan are losing revenue at the rate of $3,000,000 annually because of the lower intrastate passenger fares, which are now 3 cents a mile, while the interstate rate is 3.6 cents, John Bills, of counsel for the carriers, said. He said the same situation existed in Michigan as had been passed upon in the New York, Illinois and Wisconsin cases. There is a maximum passenger fare law prescribing 2½ cents per mile, but the three-cent fare is being charged under a federal court order.

William Smith, member of the Michigan commission, commended the dissenting opinion of Commissioner Eastman in the New York case, saying it was very "persuasive," and he recommended that the other members of the Commission give it consideration.

"In oral form it is even more persuasive than in printed form," interjected Commissioner Meyer, causing laughter.

Commissioner Smith believed the Commission should defer action in the Michigan case until after the state legislature met in January and had had an opportunity to act.

In rebuttal, Mr. Bills said it would not do the carriers any good to go before the state legislature, because they had done that before and had not obtained a sufficient increase. He referred to the injection of political considerations into such legislation and the refusal of members to vote for increased fares because it might injure them politically.

N. S. Brown made the opening argument for the railroads in the Indiana intrastate rate case. The order made by that state commission is probably the most complicated one of the state commission's orders. Increases in passenger fares, baggage and milk and cream rates were denied. An increase of 33⅓ per cent was authorized for class rates, 10 per cent for commodity rates and 16 per cent for rates on live stock and steel. There were also exceptions to these percentage increases.

Commissioner Meyer asked to what extent the order of the Indiana commission had been influenced by the Illinois commission's original action in allowing only a 33⅓ per cent increase in freight rates. Mr. Brown said that until the present case the Indiana commission had usually followed the Interstate Commerce Commission, but that its action in this case was governed practically entirely by the findings of the Illinois commission.

In concluding his argument for the railroads operating in Indiana, Mr. Brown said the whole level of Indiana rates were unduly low. He said he was satisfied that if it had not been for the Illinois-Indiana rate situation, the Indiana commission would have gone along with the Interstate Commerce Commission.

"The obvious remedy is for the Interstate Commerce Commission to find that discrimination against interstate commerce exists because of the Illinois rates and order them up to the level of the interstate rates," said he. "The Indiana commission will not complain, then, when you raise the Indiana rates to the interstate level."

A. B. Cronk, appearing for the public service commission of Indiana, said that the opportunity was afforded the Commission in disposing of the Illinois and Indiana intrastate rate cases "to ever put at rest the discrimination that exists between Indiana and Illinois." He said if the Commission should hold for any reason that the intrastate rates in Illinois should not be increased 40 per cent, that the same action should be taken with respect to Indiana rates, because the same reason would apply to the rate situation in that state. The order of the Indiana commission, he said, was made to meet the situation caused by the lower level of intrastate rates within Illinois.

## COAL PRODUCTION REPORT

*The Traffic World Washington Bureau*

A new record for the production of soft coal in 1920 was established in the week ending December 4 when the total output, as estimated by the Geological Survey, Department of the Interior, in its weekly report of December 11, was 12,757,000 net tons. This output was exceeded only in July and September, 1918, and the week ended October 23, 1919.

"The record was made possible by the railroads which furnished empty cars sufficient to load 232,340 cars of soft coal, an achievement the more creditable because on Monday, November 29, the priority in the use of open-top cars was withdrawn completely," the report states.

Dumpings of bituminous coal at Lake Erie ports in the week ended December 4 amounted to 473,915 tons of which 454,605 were cargo and 19,310 vessel fuel. The total was a decrease of 209,655 tons as compared with the preceding week.

Tonnage handled over the tidewater piers amounted to 1,110,000 net tons, of which 201,000 went to New England; 387,000 for export; 217,000 for bunker; 78,000 for inside capes, and 227,000 for other tonnage. For the month of November the total number of tons dumped over tidewater piers was 4,784,000 net tons.

A sharp increase of 506 cars marked the all-rail movement to New England during the week ended December 4. According to reports furnished by the American Railroad Association, 5,211 cars we forwarded through the five rail gateways, Harlem River, Maybrook, Albany, Rotterdam and Mechanicsville. This is the largest record since the week ended October 23, when 5,532 cars were forwarded. Shipments during the corresponding week in 1919 (the fifth week of the great strike) numbered only 149 cars, and in 1918 the total was 2,306 cars.

## BILL OF LADING HEARING

A further hearing on the domestic part of the bill of lading case (No. 4844) was held before Commissioner Woolley in Chicago, December 16, the Commissioner requesting that, in view of the fact that the hearing was to be confined to a single day, the representatives of shippers and carriers confine themselves strictly to criticisms of the domestic bill.

The first witness was Frank T. Bentley, chairman of the bill of lading committee of the National Industrial Traffic League, who presented for consideration the League's proposed form for uniform "straight" and "order" bills of lading. This form carries several radical departures from the one now in use by the carriers in official and western classification territories. These were pointed out and explained by Mr. Bentley. The parenthetical line headed "mail or street address of consignee—for purposes of notification only," has been shifted from the upper right side of the address and route part of the face of the bill of lading and placed directly below the destination line.

Some discussion was evoked by the suggestion of the eastern carriers to provide space for the designation of the station to which the goods have been consigned when the destination is some large shipping point. Objection was raised to this proposal on the ground that the uninitiated might mistake such a space as a place to write the street address of the consignee. Mr. Bentley also pointed out that the station was actually a part of the routing for which space had been provided.

The League's proposed bill of lading omits the class scale line previously carried under the routing space but the shippers agree that there is no objection to carrying this line if the carriers so desire.

Valuation of the property shipped for purposes of rate fixing is taken care of by two notes at the foot of the face of the bill. They read as follows:

> Where the rate is dependent on value, shippers are required to state in writing the declared value of the property. Where the rate is not dependent on value, any statement of value inserted herein will be null and void.
>
> The declared value of the property, the rate on which is dependent on its value, is hereby stated by the shipper to be not exceeding ........

It is declared that these clauses permit the shipper to name any value he chooses, not in excess of the actual value of the goods shipped, in order to get a rate in such cases where the rate is dependent on the value of the goods. The carrier is then, however, not liable beyond the declared value, making it necessary for the shipper to carry his own liability insurance for actual value in excess of declared value.

It was suggested by the carriers that the word "value" be defined by the insertion of the words "declared or release" after the word "dependent" in the second clause, but this suggestion was withdrawn on objection by ore shippers, the value of whose shipments is not defined by either of these adjectives. Attention was called to the fact that the word "domestic" was purposely omitted as its insertion would make it impossible to use the bill of lading on Canadian and Mexican shipments.

The last sentence of paragraph (a) Sec. 3 of the conditions on the reverse side of the proposed bill has been changed to read:

> In all cases not prohibited by law, where a value has been declared in writing by the shipper or has been agreed upon in writing as the released value of the property as determined by the classification or tariffs upon which the rate is based, for the purpose of securing the benefit of a lawful rate based upon value, such value so declared or agreed upon plus freight charges, if paid, shall be the maximum amount to be recovered, whether or not such loss or damage occurs from negligence.

The purpose of this change is to harmonize the conditions with the clauses on the face of the bill of lading.

Paragraph (b) of the same section has been entirely rewritten, and as included in the proposed bill, reads as follows:

> Claims for loss, damage or injury to property must be made in writing to the originating or delivering carrier or carrier issuing this bill of lading within six months after delivery of the property (or, in case of export traffic, within nine months after delivery at port of export), or, in case of failure to make delivery, then within six months (or nine months in the case of export traffic) after a reasonable time for delivery has elapsed; provided, that if such loss, damage or injury to property was due to delay or damage while being loaded or unloaded or damaged in transit by carelessness or negligence, then no notice of claim nor filing of claims shall be required as a condition precedent to recovery. Suits for loss, damage or injury to property shall be instituted against the originating or delivering carrier, or carrier issuing this bill of lading not later than two years and one day after the date on which notice in writing is given by the carrier to the claimant that the carrier has disallowed the claim, or any part or parts thereof, specified in the notice. Where claims for loss, damage or injury to property are not filed, or suits are not instituted thereon in accordance with the foregoing provisions, the carrier will not be liable and such claims will not be paid.

This clause evoked considerable discussion, the carriers pointing out that the same difficulty would be experienced in operating the two-year limitations portion of it because some states allowed shippers to waive these limitations. In answer to this objection it was pointed out that the phrase "foregoing conditions" made such a course impossible unless the limitations were specifically declined. The western carriers through their counsel suggested that Sec. 20 of the commerce act be inserted at the end of this paragraph. In response to a question the carriers agreed that if the claim were duly presented and subsequently pigeonholed by the claim agent, the limitation could not go into effect and the claimant would always have the right to sue.

In paragraph (a) of Sec. 4 the word "suitable" has been substituted for "available" to designate places of storage. Mr. Bently pointed out that under the present interpretation of the word the carrier often removes undelivered freight several hundred miles to designated "lock-ups," charging the full freight for this haul to the shipper. It is hoped that this condition will be remedied, although it is recognized that it cannot be entirely eliminated without a major change in policy and equipment on the part of the carriers. In this paragraph the League has also endeavored to define the responsibility of the carrier in cases of storage by the insertion of the clause: "subject to the carrier's responsibility as warehouseman only" after the phrase "and there held." It was explained that this clause merely protected the shipper in cases where damage in storage might be due to negligence or spite. The carriers agreed to this designation, although they contended that their responsibility under common law ends when they have exercised reasonable care in the selection of a warehouse.

It was found necessary to rewrite the entire next paragraph of Sec. 4, in order to make it conform with the Commission's form. In the proposed bill of lading it reads:

> Where the said property provided for in this bill of lading is lost or destroyed, resulting in non-delivery of the shipment, the carrier or party in possession shall immediately give notice thereof both to consignor and consignee. If the property covered by this bill of lading is plainly marked with the name and address of the consignor, or if the carrier's agent at destination has otherwise specific notice thereof in writing, and such property is refused or unclaimed at destination, the carrier or party in possession thereof shall send notice of such refusal or non-claim to the consignor within such time and by such means as may, in the circumstances, be reasonable.

There were no objections to this paragraph.

At the suggestion of the carriers it was agreed that paragraph (g) of the proposed bill of lading should be so amended so as to include carload lots as well as less than carload lots, substantially in the same manner as provided in the new uniform export bill of lading.

Finally, the League repeated the request made on several previous occasions that the water liability of rail carriers be defined. It is proposed to do this by the insertion of a section numbered 9 immediately under Sec. 8, to read:

> The transportation of any property under the terms of this bill, by lighter, car float, or car ferry, in or across rivers, harbors or lakes, shall be deemed to be transportation by rail.

Shippers and carriers agreed to allow previous arguments on this section to stand. In the proposed bill of lading the present Sec. 9 becomes Sec. 10.

Some discussion ensued when the representative of an eastern shipper asked Mr. Bentley's opinion as to whether the conditions could legally be left off the back of bills of lading printed by private shippers. Mr. Bentley agreed to the legality of such a proceeding, but several carriers as well as insurance representatives objected on the grounds that they were part of the contract. It was finally pointed out to Mr. Bentley that the National Industrial Traffic League had endorsed the printing of conditions on the reverse of the bill. This ended the discussion.

Mr. Bentley was followed on the stand by Mr. Crosland, chairman of the southern bill of lading committee, representing the carriers in Southern Classification. Mr. Crosland confined himself to a comparison between the standard southern bill of lading and the bill of lading used in other territories. He requested that Sec. 2 be amended to cover exemption of liability for country damage to cotton, a condition of the goods which he defined as being caused at the gin and being impossible to detect in the baled goods. He also requested that Sec. 2 on page 3 of the general classifications be added to the bill so that it would carry the principles of the common rate amendment.

Mr. Crosland placed on the stand Mr. Levis, representing the Clyde and Mallory lines, to make recommendations regarding changes in those sections which regard water transportation. Mr. Levis recommended that Sec. 8 be changed so as to eliminate fire liability except in case of neglect. He also recommended changing the word "port to port" to "intermediate port," his contention being that such stops are often necessary and that the letter of the bill had really never been followed. With regard to exemptions, Mr. Levis contended (and it was generally agreed) that so long as the water carriers in coastwise business had complied with the federal law regarding inspection before sailing, they could not be reasonably held guilty of negligence.

It was pointed out that the new bill of lading must be made to cover transportation of all kinds whether rail, water, or rail-and-water. An insurance representative stressed the need of clearly defining which clauses apply to each class of shipping and pointed out that at the present time in the state of Mississippi rail carriers are in litigation and claim that all exemptions modifying the liability of the water carriers apply

also to the rail carriers because they appear on the same bill of lading and are thus a part of the contract.

Mr. Levis was succeeded by Mr. Laws, representing the Insurance Company of North America, and other underwriters of transportation insurance. He called attention of the assembled carriers' representatives to the growing evil of losses by theft, short delivery, and non-delivery, a condition which he blamed chiefly upon the tendency of giving reduced freight rates in return for limited liability. The commissioner pointed out that these preferred rates were authorized by the Cummins amendment and that the witness' efforts had better be directed against that law, since the discussion was not germane to the subject under consideration.

The western carriers next took the stand in the persons of R. C. Fyfe, who recommended the restoration of various clauses, including the strikes and riot clause, the open car clause, the non-agency station clause, and the private siding clause. He expressed satisfaction over the substitution of the words "free time" for "48 hours" in the proposed bill, since, he said, this space of time was by no means uniform throughout the United States. Protest was made, however, as to the practice of holding the carrier responsible for the goods during this time even though they had been delivered to a private siding, which protest was met by the shippers with the statement that since demurrage was charged on sidings and spurs of this description liability also should rest upon the carrier.

Eastern carriers did not appear, but their representative, Mr. McAlister, read into the records a statement that they intended to file a brief on the subject and that the proposed bill did not by any means meet with their approval in its entirety.

Mr. Scales, of the National Association of Commission Merchants, not having the opportunity to testify, got permission to file a brief stating his contentions regarding the insertion of clauses covering perishable goods, within 15 days. February 1 was the day set for filing the remainder of the briefs.

## BILL OF LADING FORMS

*The Traffic World Washington Bureau*

Bill of lading forms, no matter how much out of date, if properly endorsed to show that the terms and conditions set forth in Consolidated Classification No. 1 apply, may be used by carriers in Official and Western Classification territories. The Commission, by letter, has been so advising those concerned for some time past. Formal announcement that it has been so doing was made on December 13, in a memorandum given out by Secretary McGinty, as follows:

"In response to numerous inquiries the Commission has advised that it will interpose no objection to the use by carriers in Official and Western Classification territories of straight and order bills of lading with the following endorsement thereon:

This bill of lading is subject to the terms and conditions set forth in the uniform bill of lading as incorporated in Consolidated Freight Classification No. 1, supplements thereto and reissues thereof, as fully as though printed hereon in full."

There never has been any doubt in the minds of well informed traffic men about the right of a carrier to use old forms, if endorsed to show that the bills so used were subject to the terms and conditions of the form prescribed by the carriers in Consolidated Classification No. 1, because the Commission has never said that such and such a form must be used. It issued an order requiring the use of a particular form but when the Alaska Steamship Company obtained an injunction against the Commission, the regulating body suspended the operative date of its order until further notice. The further notice has never been issued so that the question of what to do with the old forms has been under debate for more than a year. Inasmuch as the Commission is not prepared to say that the form set forth in the classification is the one that will be adopted finally, an order requiring the use of that form and no other would put an unnecessary hardship on those who have invested in quantities of the old form, which could be made subject to the classification form by a notation or endorsement thereon, and be good, until the Commission had come to a conclusion as to the form it will prescribe.

## C. B. & Q. STOCK ISSUE

*The Traffic World Washington Bureau*

At the resumption of the hearing before W. A. Colston, director of the bureau of finance of the Commission, December 14, on the application of the Chicago, Burlington & Quincy for authority to issue $60,000,000 of additional capital stock out of surplus and $109,000,000 of bonds, Hale Holden, president of the company, was questioned at length by Morton T. Culver, representing the Illinois state commission, and Hugh LaMaster, assistant attorney general of Nebraska, as to the value of the property.

The Nebraska railway commission filed a protest against the application. This commission contended that until the Commission's bureau of valuation has made its report on the C. B. & Q., no change should be made in the securities of the applicant. It urged that the surplus built up by the company should stand as a trust fund to cover depreciation and possible losses and to secure constant dividends in a reasonable sum to applicant's stockholders in non-prosperous years.

"The $60,000,000 of stock," the Nebraska commission said, "which it is proposed to issue and thereby reduce the surplus in that amount, should not be allowed to be issued as it would operate as a diversion of a trust fund held by the applicant for the purposes above set forth.

"No part of the proposed $109,000,000 of bonds should be issued for the reason that it is the purpose of the applicant to pay out in dividends $80,000,000 thereof and thereby reduce the surplus by that amount, which surplus was created for the purposes above stated; nor should the remaining $29,000,000 in bonds be issued until full showing is made as to the extensions and betterments which it is proposed to pay for out of the funds resulting from a sale of the bonds."

Robert J. Frank, of Chicago, who protested against the application as a minority stockholder, was not present at the hearing December 14.

O. M. Spencer, general counsel of the C. B. & Q., in argument in support of that road's application, declared that the company's return on investment in road and equipment over the last twenty years was 3.9 per cent annually.

"If that is true," said he, "this surplus did not come from excessive rates. The company should have had a return of at least 6 per cent. The company has not made this surplus out of unreasonably high rates and has not had beyond a fair return."

C. W. Bunn, general counsel of the Northern Pacific, which, with the Great Northern, owns approximately 97 per cent of the stock of the C. B. & Q., said the stock dividend would not put any money in the pockets of the stockholders, but that the proposed transaction formed a necessary foundation for the bond issue, so that the total bond issue of the company would not be more than three times the amount of the stock issued by the company.

It developed at the hearing that, with what they get from the sale of the $80,000,000 of bonds, the stockholders will pay off part of the $215,000,000 of the C. B. & Q. joint 4 per cent bonds. The remainder will be refunded by the Great Northern and the Northern Pacific on approval of the Commission.

The charge that the surplus of the Chicago, Burlington & Quincy represented excess earnings from unreasonable rates was made before Director Colston by Hugh La Master, representing the state of Nebraska, December 15. He asserted the applicant was in the position of having taken the money wrongfully and then coming to the Commission and asking for a clear title to it. He reiterated the contention of the Nebraska commission that the surplus should not be used for the payment of stock and cash dividends, but should be held as a trust fund.

La Master contended that the answer to his charge that the rates were unreasonable would not stand because the Interstate Commerce Commission permitted them to remain in effect was not sound, because it was not up to the Commission to question the reasonableness of the rates charged by the C. B. & Q. unless that matter were brought to their attention.

"Now for the first time the matter is brought to the Commission's attention in this proceeding," La Master asserted. "They (the C. B. & Q.) ought to be sent out of court with very little ceremony. The shippers paid these rates under duress."

John E. Benton, general solicitor of the National Association of Railway and Utilities Commissioners, argued against the granting of the application, declaring that the surplus should be held to take care of depreciation and not used for cash dividends and stock bonuses.

Morton T. Culver, representing the attorney-general of the state of Illinois, explained in his argument that he did not appear as an opponent to the application but that he wished the record to show the restrictions of the laws and Constitution of Illinois with respect to transactions proposed by the carrier. He read into the record parts of the state laws and of the Constitution.

E. C. Lindley, vice-president and general counsel of the Great Northern, argued that the issuance of stock dividends such as the C. B. & Q. proposed under the application had been sustained by numerous court decisions. He said the public interest would be served by bringing the capitalization of the company more nearly to the actual value of the property. He did not believe there was any merit in the contention that the issuance of the stock and bonds would have any effect in the future on the rates to be charged for transportation, because, he said, the transportation act prescribed the rates. The protection of railroad credit in general would be increased by approval of the application, he said, as the stockholders of the company had paid for the proposed issue, and that for every dollar of stock to be issued it had been shown that $1.30 had been put into the property.

## NEW ENGLAND DIVISION CASE

*The Traffic World Washington Bureau*

Formal hearings were begun December 15 on No. 11756, Bangor & Aroostook vs. Aberdeen & Rockfish, et al., commonly known as the New England division case, with Chairman Clark and Attorney-Examiner Charles F. Gerry sitting as examiners. The first session had all the looks of a New England town meeting. The room was crowded with representatives of New England railroads, New England shippers and of trunk line railroads. The attendance was as large as at the informal conferences preceding the initiation of the formal complaint asking the Commissions to increase divisions to the New England roads.

Charles F. Choate, Jr., attorney for the New England roads, made a full statement as to what they expected to show in the way of special circumstances and conditions warranting the Commission in saying that they are entitled to a larger share of what the public pays for transporting goods from and to New England.

"Is it your contention that these joint rates were established by the Commission as of the day the increases went into effect?" asked Mr. Gerry at the conclusion of Mr. Choate's statement.

"If you mean do we contend that the joint rates were established by the Commission, and that therefore it has authority to prescribe divisions, we do," said Mr. Choate. The question whether the Commission has the power to make an order respecting the division of the rates had not been raised in any other form up to that time. The proceedings had gone along apparently on the assumption that there was no question about the power of the Commission to award a larger share of the money to the complaining carriers.

In brief, Mr. Choate said the New England roads expected to prove that in September and October the net of the New England roads was $3,591,000 less than enough to meet fixed charges, and that estimates show that in the year the net will fall short of enough to pay 6 per cent on the value of the property devoted to transportation at least $23,900,000. This unfavorable condition, he said, the roads would undertake to show, was due to an increase of $100,000,000 in the pay rolls since 1917; an increase of $12,000,000 in the bill for coal, and things like that.

Another allegation that would be supported by testimony, he said, would be that the inclusion of the New England roads in the eastern group gave the eastern roads an addition of $25,000,000 in the amount necessary to make their earnings equal to 6 per cent on the value of their property, out of which the New England roads obtain no part, although that amount of money, if rates are made in accordance with the law, will accrue to the eastern roads. He said the testimony would show exactly how that conclusion was reached.

Mr. Choate caused some astonishment by saying that many of the division bases in effect now were established forty and fifty years ago, under conditions very different from those now prevailing. Some were established, he said, so long ago that nobody remembers when they were agreed on, and practically none had been established within the last twenty years.

It has been recognized, said Mr. Choate, that division according to mileage will not give the New England roads an adequate share of the money received as divisions out of joint through rates which cover three-fifths of the freight business of the New England carriers. Their needs as terminal carriers have been recognized, but not adequately, nor has any provision been made to cover the fact that costs have mounted faster in New England than in trunk line territory. Awards of wages, he said, had been especially burdensome to the New England roads because they have been paying less for similar services than their trunk line connections. Interline business, he said, has been and is paying less to the New England carriers, and that, he said, is especially true of transcontinental freight. He said the New England roads were asking for no more than an opportunity to live. They were not asking an opportunity to prosper.

H. L. Brigham, assistant to the president of the Boston & Maine, was the first witness offered by the New England roads. He was a member of the accounting committee that prepared the New England part of the case for the eastern carriers in Ex Parte No. 74. According to his first exhibit, the seven principal carriers in New England have a property investment as of October 31, 1919, of $838,274,769, including the New Haven's interest of $40,213,406 in the New York City terminals of the New York Central. On that investment, the 6 per cent allowed by the transportation law would be $50,296,485; that the average net railway operating income of the seven roads during the test period was $35,175,077; that the average net during the twenty-six months of federal control was $4,477,989, and that the net during the year ended June 30, 1920 (adjusted), was only $8,696,666, or only 1.04 on the value of the property devoted to transportation.

Each of the items mentioned in the preceding paragraph Mr. Brigham supported with statistical data.

An all-inclusive statistical study of New England roads was put into the record at the afternoon session of December 15 by William J. Cunningham, who was requested to do so by the executive officers of the New Haven. He had more than a score of exhibits to back the points he made, chief of which were that the station and junction point density is such in New England, the average haul so short and the necessary engine movements so great in number that the expense of doing business is necessarily greater than in Trunk Line and Central Freight territories, for the carriers in which the New England roads act as terminals. He said the average haul in New England is just a little over 100 miles, while in the rest of the eastern territory it is more than 150, while the traffic density in New England is but thirty-five per cent of that in Trunk Line and Central territory. The difference in figures is not due to any lack of efficiency on the part of New England railroads. The average length of a railroad in New England is only about four per cent less than the average length of a railroad in Trunk Line and Central Freight Association territories, but the average haul is much less. The track is there for a longer average haul, but points where freight is needed are nearer together, and even where the volume of business is the same, New England must handle the stuff one and a half times where the rest of eastern district roads handle it only once.

J. E. Slater, assistant to the general manager of the New Haven, was put on the stand to give the Commission a fuller understanding of the fact that New England has no well-defined heavy routes of traffic such as are to be found in the territory west of the Hudson and east of the Mississippi. Mr. Slater mentioned the route from New York to Boston as the one well-known route and then mentioned the route up the Naugatuck Valley, of which most of the railroad men from other parts of the country had never even heard.

Many important industrial centers, he said, are served by branch or second lines. This is necessary because the cities were in existence before the railroads were built. They were built around points where water power was available for manufacturing purposes. Branch lines to serve tonnage producing centers, Mr. Slater said, meant the maintenance of many junction point yards to take care of the service to and from the tonnage originating points.

New England roads, he testified, have very little overhead or bridge traffic, such as moves from one end of the line to the other without either initial or destination terminal expense. The New Haven's traffic of that character amounts to only about seven per cent of the whole. All other traffic must bear either originating or destination terminal expense and much of it must bear both origin and destination expense. The New England roads, he said, had asked the trunk lines for statistics showing overhead of bridge traffic on their lines, but the trunk lines could not furnish it. Therefore, Mr. Slater said, the exhibit of the New England roads on that point would not be as complete as they would like to make it.

Morris McDonald, president of the Maine Central, at the morning session of December 16, pictured that property as almost, if not altogether, ruined by the state and federal governments. For the first time since 1883 it has been constrained, he said, to forego a declaration of dividend for its stockholders. So large a part of its difficulties, he held to be traceable to what governments have done to it, that he said the company felt justified in appealing to the government for relief.

In the first six months of the current calendar year the road had a deficit of $1,226,000. During the test period prior to government control the average net railway operating income was $2,894,845. In that period the road's operating expenses were about $7,100 per mile. Now they are about $19,000. Increases in rates have not nearly kept pace with the increases in expenses. The general rate increases to roads in the eastern district have been 110 per cent, while the increase in operating expenses have been about 270 per cent.

President McDonald attributed the condition of the Maine Central to four things, namely, the big increase in operating expenses before mentioned; increase in the cost of coal, from an average of $3.60 per ton in 1916 to $10.35 in 1920, which, on the basis of the consumption of 432,000 tons adds $2,916,000 to the operating expense; increase in the amount of taxes demanded by the state of Maine, which collects an excise tax on gross revenues; and the increases in wages, since 1917, amounting to about $9,000,000 a year.

"We submit that every one of these factors is attributable to causes beyond our control," said Mr. McDonald, "and more largely in the control of the government. Therefore, we feel justified in appealing to the government for relief."

Owing to the disporportion in the increases in rates and expenses, the excise tax collected by the state of Maine has become exceptionally burdensome. The increase in that tax over the 1918 basis is about 75 per cent. The road estimates that the excise tax this year will amount to about $1,121,000.

Mr. McDonald said the company should increase its facilities and obtain more equipment to meet the needs of the community it has tried to serve with efficiency and conservatism but that its financial condition is such that any addition to road or equipment is not to be thought of now, with an operating deficit of

about $248 per mile, which means, he said, that the company is without a cent to pay taxes, interest or dividends, on a road that was able to weather the panics of 1893 and 1907, not to mention the financial flurries in other years amounting to severe crises for less conservative organizations than the Maine Central.

"We feel justified in asking," said Mr. McDonald," not only that the deficit be wiped out, but that we be permitted to earn a fair return on the fair value of our property. The company's revenue should be sufficient to pay the reasonable dividends heretofore paid, namely, five per cent on the preferred stock and six per cent on the common."

In beginning his statement Mr. McDonald pointed out that the Maine Central is not a speculative enterprise. Nearly 100 per cent of the preferred stock and nearly 80 per cent of the common stock are held by residents of Maine; that it has heretofore been regarded as one of the stronger railroads of New England, but that now it finds itself emerging from federal control with its credit seriously impaired, its revenues inadequate and its net so low that it is constrained, for the first time since 1883, to withhold dividends from its stockholders. According to Mr. McDonald's enumeration of the causes of the road's misery, revision of any one of the four factors of increased expense for which the company thinks it is not responsible would furnish a measure of relief. He said that increases in rates amounted to the giving of relief by one hand of the government and its abstraction by another hand of the government.

Prior to the testimony of Mr. McDonald, W. E. Slater, for the New Haven, completed his direct statement as to facts about traffic discovered by him as a result of his survey of traffic on typical days, with a view to ascertaining the elements of cost encountered by the New Haven in handling the traffic turned over to it by its connections beyond the Hudson and Harlem rivers.

Henry Wolf Bikle, for the trunk lines, subjected him to some cross-examination, but reserved most of it for a future day, when the trunk lines shall have had an opportunity to study his exhibits. Mr. Bikle asked questions tending to show a determination on the part of the trunk lines to go into the question of car detention by the New England roads. Mr. Slater gave figures pertaining to demurrage which Mr. Bikle asked to have amplified. Wilbur LaRoe, Jr.,, one of the attorneys for the New England carriers, thereupon reserved the right of the New England carriers, if so advised, to call on the trunk lines for a showing of car detention on their own rails. The impression created by the questions of Mr. Bikle was that the trunk lines will endeavor to show that the predicament of the New England carriers is due, in considerable part, to their own practices, especially their failure to require the most efficient use of equipment.

The case during the first two days was being conducted on the theory that there was no hope of the conciliation committee, the appointment of which was made on the suggestion of the Commission when the informal conference was held, bringing about harmony between the New England and trunk lines. The fact is that the committee has held several meetings without either side being able to find common ground on which a settlement might be based.

## REVENUE FREIGHT LOADING

*The Traffic World Washington Bureau*

The number of cars of revenue freight loaded in the week ending December 4 exceeded that of the preceding week by 74,489 cars, according to the weekly report of the car service division of the American Railway Association. The total for the week of December 4 was 872,162 as against 797,673 the preceding week. In the weeks of 1919 and 1918 corresponding with that of December 4 the total loadings were 789,286 and 837,806, respectively.

As compared with the corresponding week of 1919, there was a decrease in the loading of grain and grain products by 2,625 cars; a decrease in live stock of 8,671 cars; an increase in coal of 108,460; an increase in coke of 4,728; a decrease in forest products of 5,506; an increase in ore of 11,421; in merchandise, L. C. L., an increase of 41,361 and a decrease in miscellaneous of 66,292 cars.

The number of cars of revenue freight loaded by districts in the week ending November 27, as compared with the corresponding week of 1919, according to the car service division of the American Railway Association, was as follows:

Eastern district: Grain and grain products, 5,496 and 6,022; live stock, 3,296 and 3,425; coal, 51,508 and 27,678; coke, 2,539 and 3,881; forest products, 5,060 and 7,002; ore, 6,288 and 2,907; merchandise, L. C. L., 40,824 and 30,430; miscellaneous, 67,006 and 96,964; total, 1920, 182,017; 1919, 178,309; 1918, 177,612.

Allegheny district: Grain and grain products, 2,915 and 3,070; live stock, 3,451 and 3,594; coal, 61,874 and 34,381; coke, 7,451 and 4,913; forest products, 3,248 and 4,066; ore, 6,235 and 3,757; merchandise, L. C. L., 33,727 and 38,596; miscellaneous, 56,461 and 64,365; total, 1920, 175,362; 1919, 157,741; 1918, 171,068.

Pocahontas district: Grain and grain products, 107 and 207; live stock, 123 and 146; coal, 20,878 and 24,667; coke, 636 and 596; forest products, 1,623 and 1,899; ore, 129 and 259; merchandise, L. C. L., 2,340 and 139; miscellaneous, 5,750 and 8,731; total, 1920, 31,856; 1919, 36,644; 1918, 32,508.

Southern district: Grain and grain products, 2,566 and 2,533; live stock 1,882 and 2,092; coal, 31,227 and 11,023; coke, 1,358 and 253; forest products, 15,818 and 15,752; ore, 2,583 and 2,052; merchandise, L. C. L., 32,977 and 16,568; miscellaneous, 33,247 and 52,510; total, 1920, 121,568; 1919, 102,783; 1918, 105,107.

Northwestern district: Grain and grain products, 10,751 and 11,312; live stock, 8,535 and 10,090; coal, 9,903 and 10,852; coke, 1,662 and 637; forest products, 12,595 and 13,278; ore, 13,476 and 5,524; merchandise, L. C. L., 23,485 and 18,857; miscellaneous, 26,856 and 37,321; total, 1920, 107,263; 1919, 107,851; 1918, 104,005.

Central Western district: Grain and grain products, 8,675 and 10,120; live stock, 10,397 and 13,061; coal, 25,206 and 6,933; coke, 562 and 479; forest products, 4,043 and 4,134; ore, 2,547 and 2,837; merchandise, L. C. L., 26,297 and 21,343; miscellaneous, 38,614 and 43,077; total, 1920, 116,341; 1919, 101,984; 1918, 99,325.

Southwestern district: Grain and grain products, 3,412 and 4,185; live stock, 2,160 and 2,787; coal, 5,389 and 1,451; coke, 130 and 130; forest products, 7,767 and 5,999; ore, 187 and 200; merchandise, L. C. L., 14,308 and 12,744; miscellaneous, 30,093 and 26,389; total, 1920, 63,446; 1919, 53,885; 1918, 46,093.

Total, all roads: Grain and grain products, 33,922 and 37,449; live stock, 29,844 and 35,195; coal, 205,985 and 116,985; coke, 14,338 and 10,889; forest products, 50,154 and 52,130; ore, 31,445 and 17,536; merchandise, L. C. L., 173,958 and 138,657; miscellaneous, 258,027 and 330,356; total, 1920, 797,673; 1919, 739,197; 1918, 735,628.

The L. C. L. merchandise loading figures for 1920 and 1919 are not comparable, as some roads are not able to separate their L. C. L. freight and miscellaneous for 1919. Add merchandise and miscellaneous figures to get a fair comparison, the division advises.

## CAR SUPPLY SITUATION

*The Traffic World Washington Bureau*

The car service division summary of general conditions for the first half of December showed the supply of cars to be meeting the demand except in the case of coal and refrigerator cars and a shortage of double-deck stock cars reported at Chicago. General improvement is noted in the open-top car situation, although several larger coal loading roads continue to report inability to secure sufficient cars. The demand for flat cars indicates carriers have sufficient supply.

A decided increase in car surplusages and a considerable reduction in the number of deferred car requisitions in the week ending December 8, as compared with the preceding week, was shown in compilations completed December 16 by the car service division of the American Railway Association.

The average of car surplusages for the week ending December 8 was 74,195, as compared with 49,695 for the preceding week, while the deferred car requisitions amounted to 14,945, as against 19,673 in the preceding week. The car shortage was less in the week of December 8 than in any week this season.

The classes of equipment and the number of cars of each class making up the car surplusages were as follows: Box, 57,285; ventilated box, 416; auto and furniture, 2,733; flat, 1,085; gondolas, 446; hopper, 122; all coal, 568; coke, 122; S. D. stock, 7,997; D. D. stock, 1,490; refrigerator, 1,799; tank, 235; miscellaneous, 465.

The deferred car requisitions were made up as folows: Box, 1,982; auto and furniture, 34; flat, 965; gondolas, 5,061; hopper, 4,838; all coal, 9,899; coke, 156; S. D. stock, 471; D. D. stock, 35; refrigerator, 1,337; tank, 50; miscellaneous, 16.

In the above compilations the "all coal" figures include the totals of gondolas and hoppers.

## OPERATING STATISTICS

*The Traffic World Washington Bureau*

A partial summary of operating statistics for class I roads for October was made public by the Commission on December 11. It covers roads having a mileage of 191,940. Reports for thirty-seven additional roads, having a mileage of 39,800, are expected for inclusion in the final summary.

Freight service train-miles increased from 47,730,811 to 49,421,885; passenger service train-miles increased from 38,807,254 to 40,362,855; net ton-miles increased from 35,126,726,000 to 36,950,599,000; loaded freight car-miles decreased from 1,247,097,337 to 1,225,566,499 and empty freight car-miles went up from 575,714,168 to 625,719,655.

### REHEARING DENIED

The Commission has denied the petition for rehearing, in I. and S. No. 1186, filed by the Gulf, Mobile & Ohio. The case is the one created by the suspension of the applicant's tariffs in which it proposed to cancel joint rates with certain of its connections.

# RIVERS AND HARBORS CONGRESS

*The Traffic World Washington Bureau*

"I think we are going to have to come some day to a realization that the mania for speed is an unwise mania unless it is a discriminating mania," said Secretary of War Baker before the Rivers and Harbors Congress, December 8; "that great bulk commodities drawn at express speed on railroad trains with a very high carriage cost is a waste of the natural resources of the country; that we must adapt the cost of carriage to commodities of the country and the interchange and commerce of the business of the country to all of the agencies which are available to us, making the maximum use of those which are the most economic because of their conservation value looking at the problem in the aggregate.

"It is true that the railroads and other motor transportation and things of that sort cast a momentary shadow upon the development of the waterways of the country, but with the rising price of coal, with the increase of population making larger and larger demands for fuel for industrial uses, with the increased cost of labor in the production of coal, there is the place where one of the greatest economies and one of the greatest efforts toward conservation must obviously be made and I think the use of the rivers and harbors, particularly of the inland waterways of the country, is one of the greatest contributions to the settlement of the transportation problem and the conservation problem at the same time."

"The long and unnecessary delays in the so-called turnaround of vessels—and what may with equal appropriateness be designated as the turn-around of cars—due to the congested terminal facilities existent at practically all ports and railroad centers throughout this country, are an important element in the slowing down of our entire national freight movement, and are by far the most vital factor in the large and increasing costs of transportation," said John Meigs, of Philadelphia, president of the American Society of Terminal Engineers, in an address Dec. 9 on "The Vital Importance of Terminals."

Lack of terminal efficiency, the speaker declared, was directly responsible for a large proportion of "our present undoubtedly unreasonable freight transportation costs."

"Our whole system of transportation," he continued "so far as the coördination of the movements of rail and marine carriers is concerned, has largely been predicated on the assumption that a continuous movement of freight, practically without delay at transfer points, could be maintained. In freight transportation involving carriage by both ship and rail it has been the theory that the movements of these carriers could be synchronized in such matter as to avoid serious delays at the points of interchange.

"Needless to say, this is an utterly unwarrantable theory. As a matter of fact, it is impossible of working out for various reasons. One of these is that the average steamship cargo at the present time is composed of the contents of hundreds of railroad cars, from scores, or hundreds, of different points of origin, the arrival of which cars—even under the best management—cannot be so arranged as to coincide with the arrival of the ships into which they are to be unloaded. This necessitates the holding of loaded cars at the seaboard, commonly for many days and very often for weeks, awaiting an opportunity to be discharged of their freight contents and restored to rail service. In the case of some classes of export freight, as much as thirty days' storage in cars is permitted by the railroads without charge to the ships or shippers.

"To assemble a modern ship's cargo of five to ten thousand tons for export is a labor ordinarily involving a number of weeks' time, and ample space should be provided at our waterfronts for promptly unloading cars and storing and assorting cargo as received from the rail carriers.

"The answer to this demand is additional warehousing accommodations. The warehouse at terminal points, both marine and rail, is the storage reservoir in which the inequalities of delivery service by the carriers can be observed and out of which a constant flow of cargo can be maintained to meet the demands either for regular deliveries in limited quantities as to drays and cars, or those of the most urgent and extensive character as created by the exigencies of vessel loading.

"The great problem in reducing freight transportation costs has always been to get the freight out of the terminals and in motion, either on the rails or on the ocean. Lack of terminal efficiency is directly responsible for a very large proportion of our present undoubtedly unreasonable freight transportation costs.

"One official investigator of the subject asserts that of the more than two billion dollars spent per annum in antebellum days on the movement of rail freight, four-fifths of it was consumed by delays at terminals, some of course necessary, others entirely preventable and useless. This expert estimates that, year in and year out, freight cars spend eleven out of every twelve hours standing still. Thus more than ninety per cent of the life of every freight car is now consumed in switching operations, or standing idly on side tracks, or loading or unloading its contents, or in repair shops being overhauled.

"When we take into consideration the original investment, and the elements of the limited life of freight cars and the large cost of current repairs to them, we find that the expense to the railroads of storage in cars is not far from six cents per ton per day, while the corresponding cost of storage in warehouses is about two-fifths of a cent for the same period. The cost for storage in vessel hulls is enormously greater than that in railroad cars, ranging as high as from twenty-five to fifty cents per ton per day; and it is manifest from these figures that it is not only a stupid policy to fail to provide ample warehouse facilities as adjuncts to steamship piers and railroad years, but it represents such a gross waste of what are really public funds as to verge on criminal carelessness.

"The layout of marine-rail terminals should be regarded not in the casual manner that has been customary heretofore, but as a serious problem, warranting the most exhaustive investigation of the actual problems which will arise in connection with the use of them, and as worthy of the best constructive talent available for planning them both in their general proportions and in their detail design.

"The management of our ports should be considered as a strictly business problem. Let us commercialize our port activities and de-politicalize them. Competent men of affairs and capable technical men should be placed in charge of them, and left in charge as long as they are able to demonstrate their competence and capability. Without the institution of these elementary business principles there can be no continuity of port administrative policies, no comprehensive developments conscientiously carried out, no genuine economic success for our ports.

"When I first became acquainted with the Harbor Board of our principal Canadian port rival, the city of Montreal, nearly a decade ago, I was struck not only with the substantial character of the members of the board, but also with the fact that they evidently regarded themselves as permanent trustees for the public of the important matters placed in their charge. During these ten years, so far as I recollect, the personnel of the board has remained unchanged. In this same period of time no less than three complete sets of administrative officials have been in charge of every American port of consequence, and in many cases there have been even more extensive changes of executives than this.

"It would be invidious to draw direct comparisons between the results obtained at Montreal and those at most of our own ports during this time, but it is safe to say that a valuable lesson can be drawn by any student of port affairs from the impressive recent history of this northern harbor, which, although completely ice-bound for one-third of each year, successfully and economically handles an ocean commerce second only to that of New York on the American continent.

"With the present customary short tenure of office of our own port officials, the best of them scarcely have time to make any logical and noteworthy improvements; although the worst of these casual appointees have ample opportunities during their incumbency to create discord, confusion and reaction.

"Until the lost motion, the expensive delays, the inefficiencies and extravagances inherent in the operation of our present facilities—both rail and marine—are eliminated, the burden of our present unnecessarily inflated freight handling costs must be accepted.

"These costs, of course, are not being borne by the transportation companies, as they are not in business either for their health or for charitable purposes. But, as usual, the great American public, the ultimate consumer—of which class we ourselves are each of us one of the component parts—must pay for the ill-conceived mistakes of the planners and operators of our terminals.

"It is not exaggerating the subject to say that the freight transportation problem is one of the gravest that the American people have to cope with at the present time. And the answer to it lies not so much in the mere increase of carrying units—railroad cars and ships—as in the improvement of terminal conditions generally, in such manner as to enable already existing carrying equipment to be utilized to full capacity.

"In the study by political economists of the causes of high cost of living, and the difficulties experienced in reconciling it comfortably to the average family budget, the inefficiencies of our national system of terminal freight handling must be given a prominent place."

### Ample Transportation Facilities

Creation of transportation facilities of a capacity sufficient to handle "peak traffic loads" in time of emergency was urged by Brig. Gen. Charles Keller, of the army board of engineers for rivers and harbors, before the National Rivers and Harbors Congress, which concluded its sixteenth convention December 10.

"We had an excellent transportation system in 1916," he said, "which only occasionally gave trouble, and usually the trouble was due to stress of weather, something that greater capacity might probably not have cured, and yet when the greatest emergency that this nation has ever faced came upon us in 1917 and 1918, our entire transportation system broke down to a greater or less degree, and not only the railways, but the highways and

the waterways all failed to respond to the demands made upon them. So that I see it to be sound national policy that today we shall try to make a general plan which shall in capacity be great enough to take care of these greater emergencies, even though in more normal times some portions of this capacity shall remain unused, and the reason for the excess is that it is merely, like fire insurance or life insurance, protection for a time of such great need that the cost of protection is insignificant as compared with the service that it then performs.

"These facilities must be provided in the form of a system of land and water routes connected by adequate means of interchange. With the provision of land transportation facilities and agencies we have of course nothing to do, but we are forced to take note of the situation existing on land in order that we may plan intelligently with respect to the water.

"The first step in such planning is a correct knowledge of existing water traffic and an understanding of the economic laws and conditions that govern its movement. We have for years been collecting and publishing traffic statistics relating to channels and localities actually under improvement. The importance of those statistics has been appreciated and there has been a steady growth in their completeness and dependability. We are now endeavoring to harmonize them, to reduce omissions and discrepancies, and to supplement the data by whatever is needed to permit the classification of items to be standardized and the water traffic of the country to be studied and understood as a whole. We are at this moment engaged in the publication of an appendix to the current report of the Chief of Engineers which will present water traffic figures for the past ten years and some studies of movements on certain waterways. In getting this and other information together we have used everything that could be furnished by other branches of the government, such as the Bureau of Foreign and Domestic Commerce, the Customs Service, the Commissioner of Navigation, etc., and we have consulted them as to the best way of getting what we want without duplication of effort and expense, and without needless demands upon our merchants, manufacturers and shippers. With the help of the above agencies, as well as of the Shipping Board, we shall be able to get together information of much value to them and to the general public as well as to the Board itself.

"But while existing and past traffic on water must be considered in establishing a correct and broad waterway and transportation policy, we must go further than that. It is necessary to have a clear picture of our national production and consumption, of the areas in which generally they are concentrated, and of the transportation agencies by which movements are now made. As to the major commodities, such as coal, iron ore, grain, forest products and some manufactures, we are fortunately able to get together figures showing former and now-existing conditions and from these to make reasonably reliable conclusions as to the sufficiency of existing transport facilities and the nature, extent and location of additions to them now needed or likely to be needed in order to allow for future growth, including not only the portion that moves or should move by water, but also, incidentally, that which moves or should move by land, as well as that which uses or should use a joint route. This, then, is my answer, that of the Rivers and Harbors Board and of the Chief of Engineers, to my question: 'Do we need more water transportation? If so, how can this need be measured?' and the Board is now actually engaged on this entire program. Some time will be required. Meanwhile it is safe to say that trunk systems will probably be indicated as necessary with their feeders.

"In other words, what we are trying to find out, as nearly as possible, and it is a gigantic task, is what the traffic of the country actually is; to visualize it, localize it and find out as nearly as possible, what portion, if any, of that traffic remains unmoved, or moves by uneconomical routes. The task is a comparatively long one, yet on the whole as we proceed we shall more and more be in the position of judging correctly and usefully the projects that from time to time come before us, so that even in the early stages the investigation that is now in progress will, I feel quite sure, be useful.

"I think that in no other way can we arrive at a correct, comprehensive policy to replace the local or piece-meal treatment formerly in vogue. Formerly, as I have indicated to you, when the question, for example, related to the improvement of Philadelphia harbor we were forbidden to have any regard at all for New York harbor or for Baltimore, neighbors to the north and south. As things are today we consider both, and we certainly make no recommendation with reference to Philadelphia if we find that New York or Baltimore is already answering the transit need."

James E. Smith, vice-president at large and director of waterways division of the Mississippi Valley Association, referred to "our resultless policy of the past" in the development of the waterways. He suggested the following program for the future:

"First—That our association now make a demand upon the Congress for the adoption of a definite, comprehensive plan for the permanent improvement of all of the navigable waterways of our country which have already been approved by the U. S. Engineers, or which may be approved by them and added to the proposed projects for early completion, the work on all such projects to be carried on upon the plan of continuous work, to the end that they may be completed and put into use in the shortest time possible.

"Second—That the projects included in the general plan for improvement be taken up in the order of their importance, first attention to be given to the main rivers, which may be regarded as trunk line channels of a general national system of water highways, and that the work on these main lines be pushed as rapidly as possible so as to secure their completion and use as soon as possible.

"Third—That as soon as the so-called 'trunk line' channels are completed, the accumulated plant and equipment which will have been previously in use in the improvement of the larger channels, be then put into service in carrying on the work upon the improvement of the branch line 'feeders' of the main lines, which will include all rivers that traverse the productive areas of the country, and in which areas increased facilities for transportation and distribution are required to promptly and economically handle the products which the inhabitants of these areas produce or consume.

"Fourth—That in the prosecution of the proposed plan of creating and establishing a national waterway system of transportation, the plan adopted should provide for the completion of the entire system within the period of ten years, and earlier, if possible, to the end that the great problem of transportation, which is at present a menace to our future growth and development, may be satisfactorily and permanently solved.

Fifth—That provision be made for the creation of a special Waterways Commission that will be separate and distinct from all other governmental departments—similar to the Panama Canal Commission—which shall have complete jurisdiction over all inland waterways, with full legal authority to employ the necessary working force needed to carry on the proposed work; to enter into contracts for the work to be done; to determine the order in which the different projects shall be completed; and to have entire supervision over all operations connected with the undertaking until it has been entirely completed.

"Sixth—That an appropriation of one billion dollars be made by the present Congress for the purpose of carrying on the suggested plan, the amounts to be expended over a period of ten years, to be furnished as needed, to pay for the work as it is completed."

### Railroad Terminal Facilities

Separation of terminals from railroad systems and their operation as a separate and distinct service is a "surgical operation that shall remove this particular vermiform appendix now sapping the blood of every railroad system in the country," John H. Cole, commissioner of the Department of Public Works of Boston, Mass., said before the National Rivers and Harbors Congress, December 10. He discussed the need for increased terminal facilities and asked whether it was fair to compel the railroads to absorb all the expenses incident thereto. He said in part:

"How few of our people who are actually spending thousands of dollars a year in individual cases for transportation realize the inadequacy of railroad terminals as they now exist, to serve present day needs. How few of us in the nation at large have any appreciation of the enormous waste of material handled, because of improper equipment, estimated by one careful analyst to represent approximately twenty-five per cent of the entire annual commerce of the country, and chargeable almost entirely to this one improperly developed agency. Think what it means if this is true, that twenty-five billions of dollars' worth of goods every year go to waste, out of the hundred billions that we ship and put into the commerce of the nation, because of the terminal facilities, because of the delays, involving breakage, etc., putting into waste in one way or another every kind of commodity that passes on from shipper to receiver. Probably in no line is this so impressive, with the percentage of waste perhaps the largest that we have in connection with any commodity, as in relation to the agricultural products of the country. What a terrible waste in the present methods of handling cotton, hauled to the pier, shipped at great expense from the fields of the South, ultimately reaching the dock, loaded there in the vessel that sails to the port of New York, rehandled in coastwise craft or by rail, with anywhere from one to five transfer points before it reaches the seaport city of New Bedford, Mass., in which it may be consumed and to which it might have been shipped in one direct line with a single handling, if efficient transportation conditions had been worked out!

"This continent is not without interesting illustrations of efficiently organized ports, answering to a certain degree the contention that many people make in connection with the advantages to follow efficiently and properly co-ordinated rail and steamship service. Montreal and New Orleans are perhaps the two most striking illustrations of the possibility of developing equipment for handling particular commodities in such an efficient way as to greatly lessen the burden placed upon the consumer because of transfer of freight between rail and water service.

"We may gravely question the wisdom of the development of such a terminal as New Orleans has under governmental

control, either municipal, state or national. It is quite possible that the wiser method might be the organization of such great business companies as that which has been responsible for the efficient and successful terminal organization that serves the packing interests of Chicago and other cities; but whether the improved terminal shall be financed by public funds publicly administered, or public funds privately administered, is of less concern at this particular time than the question of finding some way by which this service may be improved and properly developed and made to bear its burden as a separate and distinct service.

"Separate the terminals from the railroads and it would be possible to incorporate as distinct and separate industrial enterprises practically every great terminal in all the big cities of the country and finance them as entirely separate and distinct enterprises, in exactly the same way as many great storage warehouse enterprises are financed and developed at the present time. Or, again, look upon them in exactly the same way that scores of connecting and belt line railroads are considered when operated in their service between one trunk line and another, where the definite and distinct entity is maintained, and the definite and distinct charge is made for service.

"In dealing with this problem we deal with the very heart of national business life. Any handicap placed upon transportation is a brake upon industrial activity. Any handicap that touches the co-related service to transportation is but little less disturbing. The operation of the railroads under government control led to many and serious abuses, and the restoration of confidence under private operation can come only through the widest possible interest on the part of the public itself.

"Competition between nations is as keen as any competition known. That country will carry farthest, will grow greatest, will hold the highest position in the world's councils, where is found the highest efficiency in this form of inter-communication between people."

### Resolutions Adopted

The following report of the resolutions committee was adopted by the Rivers and Harbors Congress last week:

The national Rivers and Harbors Congress, assembled in the City of Washington, at its sixteenth annual session, and represented by delegates from all sections of the country, submits the following declaration of its policies, purposes and desires.

National Organization. This is a national organization to promote and increase the facilities for and use of transportation by water. It stands for a policy and not a project. It is national in spirit and not sectional.

Production, Distribution and Terminals. The ever increasing productiveness of the country necessitates an increase in its transportation facilities—railway, waterway and highway, which must be co-ordinated. Therefore, terminals including physical connections between these transportation facilities, must be provided by states and localities, as required by the Federal Government. Co-operation is urged between the United States Engineers and local authorities in planning of such terminals so that harbor lines as established and facilities provided by the Federal Government and by local authorities shall be fully co-ordinated.

Recent Progress in Legislation. We commend the action of Congress in the enactment of the Transportation Act of 1920, in so far as it includes many of the recommendations of this organization in the interest of water transportation.

We are also grateful to Congress for their action in the passage of a water power bill, which is an initial step toward the legislation recommended by this organization.

Comprehensive Waterways Plan. We urge upon Congress the adoption with as little delay as possible, of a plan for the entire country of a comprehensive system of waterways connected wherever practicable, and in the formulation of such plan, military needs should be carefully considered. Such plan when adopted, should be pushed to early completion, first attention to be given to the main rivers and canals which may be regarded as trunk-line channels of a general national system of water highways, the work on these main lines to be prosecuted as rapidly as possible so as to permit their prompt use.

Use of Waterways. We call the earnest attention of the people of the country to the fact that navigable waterways are intended primarily for commerce, and the expenditure of public moneys for their improvement can only be justified when they are to be used for this purpose. We again urge the use of the waterways to the fullest possible extent.

Prosecution of Authorized Work. The vital need of increased transportation facilities demands the earliest possible completion of all projects approved by the U. S. Engineers and authorized by Congress. We therefore urge that the Congress appropriate each year the maximum amount of money requested by the Engineers to enable them to carry on the work on the several projects as planned, and we are unqualifiedly of the opinion that the object sought can best be obtained by placing all such work under the continuing contract plan.

## EXTENSION FOR BOND PAYMENT

The Peoria & Pekin Union Railway Company has asked the Commission for authority to extend the time of payment of $1,495,000 of its first mortgage bonds, which mature February 1, 1921, to February 1, 1926, and to increase the interest rate thereon from 6 to 7 per cent. It also asks authority to extend the maturity date of $1,499,000 income and second mortgage bonds from February 1, 1921, to February 1, 1926, and to increase the rate of interest from 4½ to 7 per cent. The applicant states that it is not able at this time to arrange for the payment of the bonded indebtedness or to permanently provide for refinancing of the same, and that in order that it may continue the proper performance by it of its service to the public as a common carrier, it is necessary that the time of payment of the bonded indebtedness be extended as asked.

# Miscellaneous Decisions

**Traffic Cases Recently Decided by State and Federal Courts**



## REGULATION OF COMMON CARRIERS

**Statute Limiting Taxable Value:**

New York Laws of 1853, c. 462, limiting the assessment of a union terminal company within the city to the capitalization of the company according to the contract between the company and the city, merely granted a privilege of exemption and could be repealed as it was by Acts 1909, c. 201, without impairing the obligations of the contract in view of a subsequent contract between the city and the corporation showing that the parties did not consider that they had an irrevocable grant and the provisions of the New York Constitution in force in 1853 (article 8, 1) that all general laws of special acts pursuant to that section might be altered or repealed.—People of State of New York ex rel. Troy Union R. Co. vs. Mealy et al., 41 Supreme Court Rept. 17.

**Unloading of Cars:**

(Court of Appeals of Maryland.) Consignee of freight transported by railroad, with duty to unload freight, is required to unload it within a reasonable time, and on his failure to so do the railroad is entitled to a reasonable compensation for the use of the cars, whether they belong to such railroad or to another company.—Penn Oil Co. vs. Triangle Petroleum & Gasoline Co., 111 Atl. Rept. 482.

**Jurisdiction of Court:**

(Supreme Court of North Carolina.) The Superior Court of North Carolina has jurisdiction over an action brought by a non-resident against a domestic corporation in the state of its domicile.—MacGovern & Co., Inc., vs. Atlantic Coast Line R. Co. et al., 104 S. E. Rept. 584.

An action for damages for injuries through negligence is transitory, and may be maintained in the local courts by a non-resident against a resident, even though the cause arose in another state.—Ibid.

Notwithstanding Revisal 1905, 423, 424, relating to venue, the Superior Court in North Carolina has jurisdiction of an action against a North Carolina railroad company for injuries in another state to a shipment in the hands of the connecting carrier, under section 1500, declaring that the Superior Court had original jurisdiction of all civil actions, where not given to some other court, for the action is a transitory one.—Ibid.

General Orders Nos. 18 and 18a of the Director-General of Railroads pertain only to venue and do not deprive state courts of jurisdiction over a domestic railroad, joined with him as a defendant in a non-resident's suit for wrongs done by a foreign connecting carrier in the state of plaintiff's residence.—Ibid.

**Furnishing of Cars:**

(Court of Appeals of Kentucky.) Where there was no agreement by the agent of a railroad company to furnish cars for stock shipment at any particular time, the carrier, in the absence of statute, is bound only to furnish cars within a reasonable time after request.—Louisville & N. R. Co. vs. Crain, 224 S. W. Rept. 1063.

It is the duty of a common carrier to provide sufficient facilities to transport the amount of freight of the kind which it proposes to carry, and which might ordinarily be expected to seek transportation on its route.—Ibid.

A carrier is bound to exercise only reasonable diligence to furnish cars requested by shipper.—Ibid.

# Loss and Damage Decisions

**Cases Recently Decided by State and Federal Courts**



## LOSS OF OR INJURY TO GOODS.

**Liability of Carrier:**

Supreme Court of South Carolina.) A railroad, which undertook to carry cotton and to deliver it to the shipper at destination, but did not perform the contract, claiming that it delivered the shipper's cotton to another railroad at destination is liable to the shipper for the whole loss, for failure to deliver to him and not to the other railroad, a third party.—Barwick vs. Northwestern R. Co. for South Carolina & Atlantic Coast Line R. Co., 104 S. E. Rept. 545.

Where one railroad contracted to transport cotton and to deliver to the shipper at destination, but did not do so, deliver-

ing instead at destination to another railroad, such other railroad could not keep the cotton for its own use, destroy it, or negligently lose it; the contract between the two roads inuring to the benefit of the shipper, who could recover possession or get damages, for the loss of the cotton from the second road.—Ibid.

Where a railroad undertook to transport and deliver cotton, but delivered to a second railroad at destination, which road had exclusive control of the cotton platform, loss of the cotton was attributable solely to the negligence of the second railroad, which, as between the two roads, is liable to the first; both being liable to the shipper.—Ibid.

Where one railroad undertook to transport cotton, but at destination delivered the cotton to another road, whose negligence caused its loss, the second road, which sold certain bales of cotton that had been left on its platform and kept the proceeds, thus evidently receiving the proceeds of the shipper's cotton or some left in place of it, as betwen the two railroads is liable for the loss; both being liable to the shipper (Per Hydrick and Watts, JJ.).—Ibid.

**Limitation of Liability for Loss of Baggage:**

(Supreme Court of North Carolina.) The order of the Director General of Railroads, limiting the recovery for loss of baggage to $100 on both intra- and inter-state transactions, is valid.—Powell vs. Hines, Director General of Railroads, et al. 104 S. E. Rept. 533.

**Negligence—Question for Jury:**

(Supreme Court of Washington.) In action for damage to stock during transportation, question of negligent operation of train held for jury.—Bennington vs. Northern Pac. Ry. Co., 192 Pac. Rept. 1073.

**Evidence:**

In shipper's action for damage to live stock during transportation by defendant railroad, shipper and his employe, both of whom accompanied the train and who were not entirely without experience in such matters, were competent to testify as to negligent operation of train.—Ibid.

In action for damage to live stock during transportation by defendant railroad, the statement of a veterinary surgeon, who examined the stock following trip during which they were claimed to have been injured, held inadmissible, in absence of explanation why veterinarian could not be produced to testify in person, not being the best evidence.—Ibid.

In action for damage to live stock during transportation by defendant railroad, the written statement of a veterinary surgeon, who examined the stock following trip during which they were claimed to have been injured, held inadmissible, since it relates to a past transaction between veterinarian and his principal as to which his declarations were inadmissible as mere hearsay.—Ibid.

In action for damage to live stock sustained during transportation by defendant railroad, shipper who accompanied train was competent to testify as to the speed of the train on that part of trip during which live stock was injured and as to the sudden stopping and starting during such part of the trip as compared with the rest of the trip, notwithstanding limited experience as to ordinary operation of freight trains and notwithstanding showing that grades were heavier during such portion of trip.—Ibid.

**Proof of Damage:**

Proof of damages to live stock during transportation, of such nature and extent that jury might reasonably infer therefrom that damages were caused by the rough handling of the live stock train, is sufficient to sustain finding that the damage was caused by the carrier's negligence.—Ibid.

**Instructions to Jury:**

In an action for damage to live stock during transportation by defendant railroad, where defendant received goods as an original rather than as a connecting carrier, instruction as to presumption that damage occurred while in the possession of the last carrier held improper, not being pertinent to any issue of law in the case.—Ibid.

Instructions on abstract principles of law are not erroneous unless prejudicial.—Ibid.

In an action for damages to live stock during transportation by defendant railroad, where defendant received the goods as an original rather than as a connecting carrier, and where there was no issue as to the condition of the live stock when defendant received them, as instruction as to the presumption that goods were damaged while in the possession of the last carrier held harmless.—Ibid.

### DELAY IN TRANSPORTATION OR DELIVERY

**Unreasonable Delay—Presumption of Negligence:**

(Supreme Court, Appellate Term, Second Dept.) Proof of unreasonable delay in delivery of a shipment by defendant railroad raised a presumption of negligence on the part of the railroad, which was not refuted by reason of plaintiff shipper's failure to tender any evidence on such issue, so that the trial court was justified in its finding of unreasonable delay caused by the railroad's negligence.—Strahs vs. New York Cent. R. Co., 184 N. Y. Supp. 362.

**Unreasonable Delay—Damages for:**

Shippers of cases of aluminum from New York to East Chicago, such shipment having been unreasonably delayed by the railroad's negligence, held properly awarded as damages, in view of the contract of shipment and the Carmack amendment of the Hepburn act of June 29, 1906 (U. S. Comp. St. 8604a, 8604aa), the difference between the invoice value of the goods at the place and time of shipment and their market value at destination.—Ibid.

### BILLS OF LADING

**Bills of Lading Conditions:**

The bill of lading issued at the time of the receipt of a shipment by defendant railroad, and the tariffs and classifications in effect at the time the shipment moved, constituted the entire contract of carriage.—Ibid.

A common carrier may limit its common-law liability by receiving the shipment for transportation, subject to all the terms and conditions of the uniform bill of lading.—Ibid.

In view of the Carmack amendment of the Hepburn act of June 29, 1906 (U. S. Comp. St. 8604a, 8604aa), conditions of bill of lading covering interstate shipment that the amount of any loss or damage should be computed on the basis of the value of the property at the place and time of shipment, etc., held not legally an exemption of the carrier from liability for negligence in not forwarding the shipment with reasonable dispatch, such provisions merely establishing a rule for determining the value of the property.—Ibid.

### CARRIAGE OF LIVE STOCK

**Delay in Transportation:**

(Court of Appeals of Kentucky.) A carrier is bound to exercise only reasonable diligence in promptly transporting freight to place of delivery, and is not bound to exercise the same degree of care which it must exercise in the safe handling of freight, either animate or inanimate.—Louisville & N. R. Co. vs. Crain, 224 S. W. Rept. 1063.

Where snow and cold were unprecedented, and were such as to prevent the prompt transportation of freight, a carrier was not liable for delay, under the circumstances, in furnishing cars for shipment of live stock, or in transporting the shipment to its destination.—Ibid.

**Carrier Insurer of Safe Delivery:**

Where neither the owner nor one representing him accompanied a shipment of live stock, the carrier is an insurer of the safe delivery of the stock at its destination, unless injury or loss results from act of God, the public enemy, the inherent nature of viciousness of the animals, or the negligence of the owner.—Ibid.

**Trial:**

Where there is no conflict in the evidence to sustain an affirmative defense, as contributory negligence, the question becomes one of law for the court, and the same is true as to the questions of reasonable care and reasonable time, ordinarily for the jury.—Ibid.

## Shipping Decisions

**Cases Recently Decided by State and Federal Courts**

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**Charter Party:**

(Circuit Court of Appeals, Fourth Circuit.) Where a shipowner assigned, as the only reason for its refusal to perform its contract to carry cargoes for libelant, a claim that the outbreak of the war with Germany had abrogated the contract, it could not, at the trial for breach of its contract, defend on the ground that the original contract was invalid for want of mutuality.—Luckenbach S. S. Co., Inc., et al. vs. W. R. Grace & Co., Inc., 267 Fed. Rept. 676.

An answer, which set forth a provision of the contract that the quantities to be carried should be mutually arranged between the parties, merely for the purpose of explaining its failure to carry cargoes before the proclamation of war against Germany, is insufficient to raise the defense that such provision made the contract invalid for want of mutuality.—Ibid.

A contract between two domestic corporations for the carriage of cargoes of nitrates from South American ports to domestic ports was not terminated by the declaration of the war with Germany, though thereafter its performance was subject to greater hazards.—Ibid.

The increased danger of capture or destruction by German submarines subsequent to the declaration of war between the United States and Germany, based on mere rumors of the presence of German submarines, and on the instructions to the submarines by the German government, is not "restraint of princes," within charter party exemption from liability.—Ibid.

Where a corporation, which owned a number of ships,

leased them to another corporation, which had a small capital stock, and which was controlled by the same officers and directors, and 90 per cent of whose stock was owned by the same stockholders, at a rental which, though more than nominal, was far below the value of the ships, the owning corporation so far participated in the contracts of the leasing corporation as to be liable for their breach.—Ibid.

An allowance of $5,000 to the commissioner, who took the testimony in a libel suit, in which the amount in controversy was large and the questions were of some difficulty and received thorough and painstaking examination, will not be set aside as excessive.—Ibid.

## REPORT OF SHIPPING BOARD

*The Traffic World Washington Bureau*

"A study of the world exports and imports has resulted in our merchant marine being placed on fifty foreign trade routes," said Admiral Benson, chairman of the United States Shipping Board in his letter of transmittal to Congress of the fourth annual report of the board, December 13.

"On June 30, 1920, there had been established 209 general cargo berths, of which 202 are between the United States and foreign ports and between United States ports, and seven between foreign ports. These various berths afford the shipper 229 services. Many of them are making voyages to ports of the world where ships under the American flag were seldom seen before.

"Through the establishment of foreign agencies, the American merchanet marine has become independent of alien foreign agents. The vessel flying the American flag is given primary consideration. In addition to the establishment of direct agencies, encouragement has been given to American firms who upon their own initiative and capital have opened offices abroad. It is hoped that American vessels will have preferential treatment in foreign ports in securing cargoes, economical administration in the matter of port changes, and expeditious dispatch."

The report shows that in the fiscal year ending June 30, 1920, the board had under its control 1,574 vessels of all classes with a deadweight tonnage of 9,358,421, as compared with 961 vessels of 5,346,939 deadweight tons for the year ending June 30, 1919. The total number of vessels operating on June 30, 1920 (excluding coastwise and tramp vessels), was 1,236 vessels of 8,398,272 deadweight tons. The grand total of the United States seagoing merchant marine of 500 gross tons or over for the fiscal year ending June 30, 1920, was 3,404 vessels of 11,278,741 gross tons, an increase of 746 vessels of 3,523,887 gross tons over the fiscal year ending June 30, 1919.

In regard to the board's efforts to standardize bills of lading, the report says:

"The board is endeavoring to standardize commercial documents, such as bills of lading, charter parties, etc. The board, as the largest shipowner in the world, feels that it has an imperative duty to take the lead in bringing about the use by the whole shipping world of documents of this character that will be standard and uniform. Of course, no bill of lading can be made to serve the purpose for all trades in the world. It will be necessary to classify the various trades and to adopt separate bills of lading for each particular trade, having regard to the peculiarities of that trade. The charter parties must, for the same reason, be subjected to careful analysis and classification. When, however, the various trades are so classified, there is no reason why the uniform standard document should not be used by all shipowners in that trade. The Shipping Board has therefore undertaken this work. The standardization of documents is especially necessary in the case of managers of Shipping Board vessels. Otherwise, one manager, more eager for business than the others, will relax the restrictions in a bill of lading or charter party intended for the protection of the ship and so, by making more favorable terms to the shipper, obtain his business away from the other managers who refuse to make concessions to the shipper that would be detrimental to the board's interest. Since the compensation to managers is percentage of the profits they earn for the board, there is necessarily competition among them. The more business they secure the greater their profits and consequently the greater their compensation. This compensation should always be fair and should always be conducted with regard to the board's interest. All bills of lading and charter parties being a compromise between the respective rights of the ship and the shipper, every concession made to the ship is a sacrifice by the shipper. The board cannot permit the competition between managers to result in managers bartering away in the various clauses in these commercial documents provisions intended for the ship's protection. To allow one manager to secure business by waiving bill of lading conditions intended for the protection of the ship and to insist on other managers in the same trade complying with these conditions is merely to punish the manager who has stayed loyally by the board and to reward the less scrupulous one who has not been willing to guard the board's interest."

The establishment of rate conferences, which followed the decision of the board to cease the issuance of tariffs on March 1, 1920, "complete stabilization of rates in some trades and a large measure of stabilization in practically all the trades has followed," the report states.

"The formation of the conferences after March 1, 1920, changed the character of the work of the rate divisions," the report says. "Although being relieved of keeping in actual touch with the local conditions which was necessary in order to quote on all kinds of cargoes and in varying quantities, the division has been called upon to perform duties of a different nature and of greatly added importance. The rules of the conferences require that any action on their part must be by unanimous vote; failing, the questions in hand are referred to the board for decision. Further, before making any drastic rate changes the conferences must also submit their recommendations for approval. A successful functioning of the conferences as a whole requires a relationship in rates and practices among the different districts, which is brought about by suggestions or instructions from the rates division. Criticisms by the public of rates or practices when they are made are investigated and handled by this division with the assistance of the conferences, when necessary."

As of June 30, 1920, the report shows, the board had sold 426 vessels of 2,195,440 deadweight tons at a total sales value of $279,914,594.31.

The Emergency Fleet Corporation in the year ending June 30, 1920, delivered 1,002 vessels of 5,694,567 deadweight tons. The report says the total building program at the close of the last fiscal year contemplated 2,368 ships of 13,616,836 deadweight tons but that because of cancellations and transfer of the board's interest in ships under construction, the program has been reduced to 2,315 ships of 13,675,711 deadweight tons. These figures show a reduction in the number of ships but an increase in tonnage. During the fiscal year ending June 30, 1921, the report says, at least 1,685,750 deadweight tons will be delivered, leaving only 367,600 deadweight tons under construction. The accumulated program included 3,268 ships of 18,381,276 deadweight tons but after the armistice the program was reduced by 951 ships of 4,697,465 deadweight tons, a decrease of 25½ per cent and a reduction in ultimate expenditures of at least $650,000,000. On June 30, 1920, production of ships under the accumulated program was 93.3 per cent complete, the report says. On that date the keels of 2,289 ships had been laid, 2,194 ships had been launched and 2,070 ships had been delivered.

A summary of the results of the construction and operation of ships by the Emergency Fleet Corporation since its inception to June 30 of this year was given out in connection with the annual report. It shows "net outcome of all transactions (excess of expenses and charges over revenues)" amounting to a total of $513,366,139.19.

What that figure means has already become the subject of controversy. The ordinary newspapers have published it as meaning that the Shipping Board's operating subsidiary, in the two years and odd months it has been building, hiring and operating ships, has lost more than half a billion.

In connection with that item the general comptroller of the fleet corporation gave out a review tending to show that that item is composed of what he called "book figures" not representing expenditures of money, but bookkeeping accounts to show what would have happened to the corporation if it had done something other than that it did do. One item was for $140,393,528.94 set down under the caption "insurance" with the explanation that that is what it would have cost the Shipping Board had it bought insurance instead of carrying its own insurance. Another item of $228,314,107 covers "depreciation" which the comptroller explained as being "accrued depreciation" to ships assigned for operation at the rate of 10 and 12.5 per cent per annum. These rates, he said, were deemed conservative owing to the high cost of labor and material during the war.

Another item, of $86,321,576.86, the comptroller explained, represents "in part" a book item, and is accrued at the rate of only four per cent per annum. That item is offset, he said, by $68,613,086, actually spent for the maintenance of vessels. In a final summing up on that item of $513,366,139, the general comptroller said:

"This item does not necessarily give final reflection of the outcome of all transactions for the reason that it contains expenditures amounting to approximately $105,670,993.11 made for the account of the Army and Navy Department, and such expenditures have not yet been reimbursed to the Corporation; rentals, which are in the course of being transferred to receipts from revenues, now shown as a reduction of costs of construction; likewise interest, discount and proceeds of sales of shipyard plants; the difference between Undistributed Construction Charges, $50,240,964.24 and that amount which will ultimately be applied to construction projects; net revenue in the books of the agents of the Emergency Fleet Corporation estimated as amounting to $59,780,460.00, the physical transfer of which has not been made to the general books, and therefore is not reflected in this statement; contract cancellations, now shown as construction costs which will be undoubtedly charged to con-

tract cancellation, which is estimated as amounting to $12,891,018.10. Thus, in order to obtain a conservative reflection of the outcome of all transactions, the aforementioned items should be considered. With this in mind, the foregoing items which amount to $202,801,399.25 would reduce the $513,366,139.19 to $310,564,739.94, which is offset in part by the reserve for depreciation on vessels, insurance on vessels lost and other accidents, amounting to $336,630,351.97, this making the net excess of $26,065,612.03, which should be further increased by the unused portion for maintenance and stipulation expense previously commented on, amounting to $21,114,828.36, together with the $9,199,211.74, representing expenditures on unsold seized German and Austrian vessels. We then have an excess of revenues over expenses amounting to $56,379,652.13 as against the $513,366,139.19 shown on the summarized statement as an excess of expenses and charges from revenues. And we believe it may be said that, this $56,379,652.13 less expenditures on vessels lost or sunk estimated at $50,115,842.31, or $6,263,809.82, represents a more definite reflection of the outcome of all transactions as of the date of the annual report, taking into consideration all transactions shown on the books and those in process."

## SECTION NO. 28 SUSPENDED

*The Traffic World Washington Bureau*

The Commission, December 13, suspended indefinitely Section No. 28 of the Merchant Marine Act.

The decision of the U. S. Shipping Board to certify to the Interstate Commerce Commission that Section 28 of the merchant marine act be suspended indefinitely beyond January 1, 1921, when the existing suspension order expires, was reached after consideration of the testimony heard on the subject December 6. (See Traffic World, December 11, p. 1150.)

It was apparent after that hearing—if the board was to act on what had been submitted to it—that the section would not be made operative. There was no definite information submitted as to the adequacy of American shipping facilities to handle the export and import business of the country, though that is the information the board must have to make the section operative. A number of the witnesses expressed their belief that American shipping facilities were inadequate, but it did not appear that any representative of the board or of those opposing enforcement of the law had made an investigation for the purpose of submitting data on that subject.

The resolution adopted by the board follows:

Whereas, Adequate shipping facilities to handle the commerce of the United States to or from all foreign ports and ports in the possessions or dependencies of the United States are not afforded by vessels documented under the laws of the United States;

Resolved, That the United States Shipping Board certify to the Interstate Commerce Commission that adequate shipping facilities for handling the commerce of the United States to and from all foreign ports and ports in the possessions or dependencies of the United States are not afforded by vessels documented under the laws of the United States and that the operations of the provisions of Section 28 of the Merchant Marine Act, 1920, should be further suspended by said Interstate Commerce Commission until further action by the United States Shipping Board;

Further resolved, That as soon as adequate shipping facilities as required and defined by Section 28 of the Merchant Marine Act, 1920, to or from certain ports become available, prompt certification of conditions will be made and the enforcement of the provisions of Section 28 will be requested;

Further resolved, That every effort will be made to hasten the providing of American shipping facilities so that the provisions of Section 28 will be made operative at the earliest practicable date.

## COST OF SHIP CARETAKERS

*The Traffic World Washington Bureau*

Attention to the money the government is spending on vessels placed under caretakers by the United States Shipping Board was called by Senator Jones, of the Senate commerce committee, in a statement issued December 13.

"A particular and material item of loss sustained in the handling of our merchant ships built by the Shipping Board Emergency Fleet Corporation from war-time appropriations has been the subject of little comment," said he. "This item is constituted of the cost of care of vessels found undesirable or needless for our own merchant marine but for which there are calls on the part of other and smaller countries. A vast sum has been expended in the care of these vessels which have been tied up and in addition there has been a material loss due to depreciation and deterioration.

"This loss has been due primarily to the prolonged delay on the part of the President in appointing a Shipping Board of seven members as required by the merchant marine act of this year.

"To guard against the passing of any of our vessels from our flag to that of a foreign country through the activities of any subordinate in the Shipping Board without careful consideration and specific approval of the board itself in each instance, the merchant marine act carries a provision that sales of vessels to aliens can be made only when the board, after careful investigation, deems the same unnecessary to the promotion and maintenance of an efficient American merchant marine, and where it has, after diligent effort, been unable to sell such vessels to citizens of the United States. The further requirement is made that the board can make such determination to sell only upon an affirmative vote of not less than five of its members, spread upon the minutes of the board, and that it must make as a part of its records a full statement of its reasons for making such sale.

"Naturally with only two instead of seven members on the board between June and November, the carrying out of this provision to permit the sale of needless types of vessels to aliens has been inoperative. There has been a strong showing that we do not need some of the wooden vessels nor some of the smaller steel vessels and the board has been unable to sell any material portion of these vessels to Americans. In addition, of course, it has been impossible to make a physical compliance with the provision in the merchant marine act that there shall be a segregation of the work of the board among its seven members."

## SHIPPING BOARD INVESTIGATION

*The Traffic World Washington Bureau*

The Walsh select committee of the House of Representatives, which has been holding hearings in New York on Shipping Board operations, began hearings in Washington this week. Among the witnesses heard by the committee were William Denman, the first chairman of the Shipping Board, and Martin J. Gillen, former assistant to John Barton Payne when the latter was chairman of the board.

Mr. Denman's testimony related to the activities of the board in the early days of its existence and of the alleged dispute between himself and General Goethals over the shipbuilding program. He said he had urged adoption by the board of the Diesel engine as motive power for the board's vessels and he criticized the board's refusal or failure to approve the recommendation. According to Mr. Denman there were no serious differences of opinion between himself and General Goethals.

Mr. Gillen urged that conditions in the Shipping Board and the Emergency Fleet Corporation be corrected by separation of the two organizations.

That the British mission which visited the United States in 1917 made efforts to influence the policies of the Shipping Board was the effect of testimony by Mr. Denman, former chairman of the board, before the House investigating committee. He declared that a member of the mission somehow became a member of an administrative board established in New York to function with the Shipping Board "on a purely American basis." Denman asserted he did not know how the Briton got on the board, but that he got off after a warm session of the Shipping Board. He said the board wished to co-operate with the British, but that it did not want the British to influence the board before it got its program under way.

The Walsh committee, at the conclusion of the testimony December 15, adjourned until after the holidays. When the hearings are resumed, members of the present Shipping Board will be called as witnesses, Chairman Walsh said.

## CO-OPERATION OF BOARD AND I. C. C.

*The Traffic World Washington Bureau*

The Shipping Board December 10 took the first step toward a co-ordination of its own regulatory efforts with those of the Interstate Commerce Commission. It adopted resolutions suggesting a joint conference committee of the two bodies to recommend concerted action on not only section 28 of the merchant marine act, but every other phase of regulation of carriers where the latter come into contact at the water's edge. The Shipping Board realizes that, unless there is co-operation and co-ordination, conflicts will arise, especially in a matter like the joint bill of lading for export freight.

The liaison committee (assuming that the Interstate Commerce Commission will accept) will be composed of members of the two bodies, but in the actual handling of work in which both bodies are interested, the tasks prior to final disposition will probably be done by examiners and other employes.

While no announcement has been made as to the authorship of the resolution looking toward such co-operation, it is believed probable that the suggestion came from Joseph N. Teal, the Pacific coast member of the Shipping Board. By reason of his long familiarity with the Interstate Commerce Commission's work in the regulation of carriers and his knowledge of the efforts of Portland and other port cities to foster and develop overseas trade, he knows there are many matters in which the two regulating bodies should have a full understanding so as to prevent conflicts.

Section 28 of the shipping act is one of the most obvious matters. Through export bills of lading are another, and that part of the interstate commerce law authorizing the Commission to require the making of through route and joint rate arrangements between carriers by rail and carriers by water is a third—all obvious, but nevertheless felt to contain the possibilities of trouble and conflict.

Recently, at a hearing on the export bill of lading which the Commission is proposing to prescribe, the attitude of the Shipping Board men seemed to be so unlike what is believed to be the probable attitude of the men in the Commission who will make up the rough draft of the Commission's decision, as to suggest conflict. While, on the surface, there was no conflict, the implication of questions and statements of the Shipping Board men was that they could not be expected to agree with suggestions of shippers for modifications along the line of principles that had been accepted by the Commission.

There is a question of jurisdiction on the subject of bills of lading for export. The Board and the Commission will have to decide which body has the right to say what the ocean part of the bill shall contain. Shipping Board men insist that the Shipping Board is the body whose views shall prevail, notwithstanding the idea at the Interstate Commerce Commission that the law places on that body the duty of prescribing that form.

In the matter of rates on inland waterways such as Chesapeake Bay, there is also the possibility of conflict—unless the Interstate Commerce Commission should take the position, and sustain it in the courts, that it has power to require carriers by rail and carriers by water to enter through route and joint rate arrangements and itself prescribe the rates, in the event the carriers fail or refuse to do so.

The interstate commerce law authorizes the Commission to require carriers by rail and carriers by water to make physical connection at their docks, and to apportion the cost between them. The Shipping Board owns docks and the question as to whether the Commission has the power to require another branch of the government to do something, if and when presented, contains possibilities of dispute and contention.

A superficial view of the points where the duties of the two bodies come into contact, it is believed, caused the Board to extend the suggestion of a getting together on matters that might bring them into conflict. Up to this time there had been little effort at co-operation. That was because the chief duty of the Shipping Board and its subsidiary, the Emergency Fleet Corporation, has been to construct boats. Rates, rules and regulations have been of subordinate interest. In fact, the Shipping Board as a rate and practice regulating body has been almost unknown. Its file of tariffs is merely a skeleton, not because the officials in charge of that phase of the work have not tried to bring it to a condition of respectability, but simply because the main object has been to get boats constructed and into operation.

Now, however, the big question is to find employment for the boats and to see to it that the rates, rules and practices of the boats in the control of the government are made to work for the development of commerce, and not merely as an echo for foreign or other private lines.

In the last nine months of the life of the Railroad Administration there was close co-operation between the Shipping Board and the organization in control of the carriers by land. It was the Shipping Board that made possible the settlement of the controversy of years of standing, as to whether the ship or the railroad should pay demurrage on freight moving on so-called through export bills of lading, that was not loaded into the ship for which it was intended. The Shipping Board agreed to an arrangement, still in effect, under which it is made the duty of the agency causing the detention to pay demurrage. If the railroad is at fault it stands the cost of storing the goods until the departure of a ship that does carry forward the delayed freight; if the fault lies with the ship, then it stands the demurrage, while if the goods were held through an act or failure to act, of the shipper, then he pays the demurrage. That agreement, so far as known, has worked satisfactorily.

A joint committee, it has been suggested, will enable the two bodies to handle questions in which both are interested more satisfactorily than it would be possible to handle them if each body went about the business it considered its own, without regard to the other body.

## RECORDS FOR AMERICAN SHIPPING

*The Traffic World Washington Bureau*

American vessels carried 45 per cent in value of exports from the United States and 39 per cent in value of imports to the United States in the fiscal year ending June 30, 1920, according to the annual report of the Commissioner of Navigation of the Department of Commerce. In 1914 American ships carried only 10 per cent in value of our exports and imports.

"The year was one of maximum records in most branches of American shipping and shipbuilding and is not likely to be equaled for years to come, and our progress can be measured only by world standards," said a statement explanatory of the report.

"The total American registered, enrolled and licensed tonnage on June 30, 1920, was 16,324,024 gross tons, three times the tonnage in 1914 of Germany, whose former place as the second maritime power the United States now firmly holds.

"The year's increase in American shipping has been 3,416,724 gross tons, an annual increase larger than the whole world's increase during any year before 1914.

"The American ships built and documented during the year aggregated 3,880,639 gross tons, an output comparable only to the world's pre-war record launching of 3,332,882 gross tons in 1913 and the British record of 3,808,056 gross tons under construction on June 30, 1920. At the end of December, 1919, American shipyards had built ships (including a small tonnage for foreign owners) at the rate of 4,258,141 gross tons per annum and at the end of March, 1920, our yards had built steel ships alone at the rate of 3,679,285 gross tons per annum. The peak of annual wooden-ship production, 1,021,020 gross tons, had been reached at the end of June, 1919, and its decline to 297,864 gross tons during the past fiscal year is not without its consolations.

"American ships registered for foreign trade on June 30, 1920, aggregated 9,928,595 gross tons, nearly tenfold the tonnage so registered in 1914.

"This registered tonnage during normal domestic conditions of trade, control and production would suffice to carry about 60 per cent in value of the foreign trade of the United States and, in fact, during the past year has carried 45 per cent in value of our exports and 39 per cent in value of our imports, while in 1914 American ships carried only 10 per cent in value of our exports and imports.

"The increase during the year in our tonnage registered for foreign trade has been 3,258,869 gross tons, or virtually 50 per cent, and is by itself more than the tonnage under any flag but the British (which amounts to 20,582,652 gross tons), slightly exceeding the total of 3,245,194 gross tons under the French flag, which ranks next to the American.

"The clearances of American ships in foreign trade have aggregated almost 29,000,000 net tons, or close to 52 per cent of the total clearances, and double the percentage of 1914.

"For the first time in a third of a century one-half of the officers and crews of American ships in foreign trade have been American citizens, born or naturalized.

"These matters are not recorded in a boastful spirit, and we shall greatly delude ourselves and invite the fall which pride and vain-glory usually precede if we do not consider the causes which have worked such results. All are directly attributable to ruthless German submarine warfare which, on the one hand, wrought vast losses to the merchant shipping of allied and neutral nations alike and, on the other hand, impelled the American people by pledging themselves to Liberty bonds and heavy taxes, to vote through Congress vast appropriations to build ships to make good those losses and to win the war. The amount expended, $3,000,000,000, is more than all the ships in the world, 49,000,000 gross tons, were worth in 1914, and in interest and sinking-fund contributions stand today for annual taxation to the amount of $225,000,000, to which annual depreciation of the ships will add $150,000,000."

## SHIPPING BOARD ORGANIZATION

*The Traffic World Washington Bureau*

Admiral Benson, chairman of the United States Shipping Board, has announced the division of supervision among the members of the board of the various activities of the organization. The chairman himself will supervise matters pertaining to industrial relations, fuel oil purchases, and personnel. Commissioners Sutter and Goff will supervise port facilities; Commissioners Donald, Sutter and Goff, ship sales; Commissioners Rowell and Sutter, insurance; Commissioners Goff and Donald, recruiting service; Commissioners Rowell and Sutter, transportation and housing, and construction claims board; Commissioners Teal, Thompson, Sutter and Benson, division of regulations; Commissioner Rowell, advertising and publishing; Commissioners Teal, Thompson and Rowell, Interstate Commerce Commission conferences; Commissioners Teal, Thompson, Rowell and Goff, general comptroller's office; Commissioners Teal and Thompson, treasurer and disbursing office; Commissioner Goff, law; Commissioners Thompson and Goff, supply and sales; Commissioners Donald, Rowell and Teal, division of operations; Commissioners Donald and Thompson, construction and repairs.

Commissioner Frederick I. Thompson of Mobile, Ala., was elected vice-chairman of the United States Shipping Board at a meeting of the board December 8. Commissioner Donald was the vice-chairman on the old board.

## FEDERAL BOAT OPERATION

*The Traffic World Washington Bureau*

Cessation of federal operation of boats and tugs on the New York Canal Section of the Inland and Coastwise Waterways Service, but continuation of federal operation of the services on the lower Mississippi and Black Warrior rivers until "governmental operative functions" have been completed, is recommended by Brig. Gen. Frank T. Hines, as chief of the Inland and Coastwise Waterways Service, in his annual report to the Secretary of War. Hines left the service recently and was succeeded by Brig. Gen. W. D. Conner.

"Congress has in numerous instances, and particularly in consideration of the disposition of rail carriers, distinctly re-

corded itself as opposed to a general policy of government operation of public utilities," the report says.

"While the railroads may be considered as to-day being on trial under private enterprise, upon the failure of which the federal government will be obliged to resume control of their operations, it is nevertheless believed to be incompatible with public desire to consider the retention of these water lines once they have been established upon a satisfactory operating basis and reduced to a condition of effective operating efficiency by the federal government.

"In connection with the three distinct services now being maintained by the government, it will be seen that innumerable obstacles have been met with, handicaps which in the past have deterred private enterprise from projecting waterway operations on the sale requisite for success. In the case of the New York Canal Section it is believed that with the delivery of new floating equipment, which will be completed during the present season, the obstacles incident to the inauguration of that service will have been largely overcome and that future operations on this section will be at a profit. It is therefore believed that the distinctively operative functions of the federal government with relation to this particular waterway have in a large measure been completed, and that proposals for further operation of the government-owned equipment under private capital may be entertained, providing satisfactory remuneration for the existing equipment can be obtained, together with assurance of the maintenance of a service of at least the same scope and at not less than existing tariffs.

"On the lower Mississippi and Warrior sections, however, it is believed that the governmental operative functions have in no sense been completed. It seems certain from the record of operations on these waterways during almost two years that an organization has been completed which, with the delivery of the newer types of equipment, will insure operations on a satisfactory financial basis. Further development of these lines by the federal government, however, will be required until such time as the more important elements of tariffs, terminal facilities, and operations shall have been refined and coordinated and these sections actually found to be prosperous and going transportation lines. When such a point has been reached it is believed to be proper to relinquish the operation of these sections to private enterprise.

"The relation of this division to such barge services, either now in operation or to be inaugurated later, should by no means cease should they at some future period be relinquished to private operation. The second phase of the duties of this division, as already outlined, includes the tendering of direct assistance to private waterway operations of every nature, to the end that an equitable working arrangement between the waterways and railways and highways may be maintained, particularly in the matter of tariffs and interchange agreements; that proper types of floating equipment may be devised at government expense where necessary that navigable waterways may be maintained in accordance with the requirements of traffic; and that adequate terminal facilities may be developed through governmental aid where required. To these functions may be added the analysis of additional waterway routes, the instigation of their development as arteries of traffic under private enterprise, and, where this is impracticable and there exists a definite need for freight services over such routes, the inauguration of suitable services.

"In the performance of these duties, all directly stipulated in the transportation act, it has been considered essential that the Division of Inland Waterways be separated from other activities of the military establishment and organized as a bureau totally distinct from the more military offices of the department. It is further believed that, owing to the essentially nonmilitary nature of this work, such a bureau should be directed in its more technical departments by properly qualified civilians."

Losses during the fiscal year, ending June 30, 1920, were reduced to $82,193.14, according to the report, as compared with a loss of $506,807.38 in the year ending June 30, 1919. Operating revenues for the year ending June 30, 1920, amounted to $606,640.01, and operating expenses, $683,377.09. Total disbursements during the fiscal year, 1920, were $2,755,830.77, including amounts expended for new equipment from funds provided by the Director General of Railroads.

"The very high cost of fuel, both oil and coal, was an important factor in increasing the expense of operations during the season of 1920, beyond what could reasonably have been expected," the report said. "The necessity for higher wage scales upon power units than was paid in previous years has also contributed largely to the increased cost of operation. It is quite probable that before the close of the present season further increases in the wages of all vessel crews will be necessary. A comparison of operating revenues and expenses for the two complete years that service was conducted shows that while the revenues were practically the same, expenses during the second year's operation were reduced by more than $400,000. This reduction is due primarily to difference in type and capacity of craft we used during the two seasons."

If the Mississippi barge service is to be accorded an opportunity to make earnings in any way comparable to those of rail lines, existing terminal limitations must be removed to permit of efficient interchange between land and water carriers, the report said.

"The situation at the close of the fiscal year indicates that the need of interchange terminals is greater than at any time in the past," the report said.

"The very satisfactory fleet of boats and barges which it is expected to place in service shortly will be of little real value in producing the revenue needed to make this line a success until such interchange terminals are in operation. It is useless to attempt to increase tonnage when it is clear that but a limited amount of traffic can be forced through the throat of operations, no matter how well or how fast it is transported. It will be impossible to show entirely satisfactory returns, either in service or earnings, until more adequate interchange terminals are provided."

Actual operations on the lower Mississippi thus far have been with emergency equipment only, the report says, and, are in no way representative of what can and should be done with full equipment of coordinated tow-boats and barges, proper terminals and inclusive tariffs.

## ACT APPLIES FROM FOREIGN COUNTRY

*The Traffic World Washington Bureau*

The act to regulate commerce applies to the transportation of both passengers and property from an adjacent country, such as Canada, to a destination in the United States, the United States Supreme Court held, December 13, in case (No. 100) of Galveston, Harrisburg & San Antonio Railway Co. vs. L. H. Woodbury and Vincent Woodbury. The court reversed the Court of Civic Appeals for the eighth supreme judicial district of Texas for sustaining a judgment of $500 against the railroad company for the loss of a trunk and contents, holding, that, under the defendant's tariffs, the maximum liability was $100.

Mrs. Woodbury, the plaintiff in the trial court in Texas, traveled on the G. H. & S. A. from San Antonio, Tex., to El Paso, Tex., and checked her trunk. She was traveling on a round-trip coupon ticket bought at Timmins, Ont. Her trunk was lost on the part of the journey between San Antonio and El Paso and she brought suit. The trial court jury gave her $500 but the trial court judge set this aside on a finding that the judgment could not exceed $100. An appeal was taken to the higher state court.

The plaintiff was not told of the limitation on the amount of the carriers' liability, but the company insisted that Mrs. Woodbury was on an interstate journey and that under the act to regulate commerce it was not liable for more than $100, since it had filed with the Interstate Commerce Commission a tariff limiting its liability to that amount unless the passenger declared a higher value and paid excess charges, which Mrs. Woodbury had not done. She insisted that her transportation was not subject to the act to regulate commerce because it began in a foreign country.

The Supreme Court said in its opinion that if the journey had started in New York there would be no question as to the application of the tariff provision. It also said the Carmack amendment under which carriers may limit liability by published tariffs applies to the baggage of a passenger carried in interstate commerce. It disposed of the contention of counsel for Mrs. Woodbury that the act did not apply to the transportation of passengers from a foreign country to a point in the United States by saying that the transportation was not that of a person but of property and that the "act does apply to the transportation of both passengers and property from an adjacent foreign country such as Canada."

The Court held, therefore, that the carrier and the passenger were bound by the tariff limiting liability to $100 and said that that was the maximum amount that could be recovered.

## RATES ON ORE

*The Traffic World Washington Bureau*

Eighty-odd iron ore mining companies, producing about twenty-seven million tons of ore in the upper lake region, have joined in a complaint against the railroads hauling their ore from the mines to upper lake docks, alleging that the rates on ore are unreasonable and unjustly discriminatory and that reasonable rates would be such as would yield six per cent on the value of property used in transporting such ore. Rates in excess thereof, it is declared, "are tantamount to a rebate to the United States Steel Corporation, which controls two of the common carriers which, combined, haul more than half the entire ore tonnage, and that rates now in effect are unjustly discriminatory in favor of a particular shipper and in violation of spirit of section 2, as well as in violation of the letter of section 3." Technically, the case is that of the Adriatic Mining Company et al. vs. Chicago & Northwestern et al., prepared in behalf of non-corporation producers of ore by Jean Paul Muller. The attack is aimed only at roads that carry ore from mines to upper lake docks. It is contended that in the fifteen per cent case the unreasonableness of ore rates was admitted and their reduction after the war promised. The complaint will be filed Monday.

# Questions and Answers

In this department will be answered questions of both legal and practical nature that confront persons dealing with traffic. A specialist on interstate commerce law, who is a member of our legal department, will give his opinion in answer to any simple question relating to the law of interstate transportation of freight. A traffic man of long experience and wide knowledge will answer questions relating to practical traffic problems. We do not desire to take the place of the traffic man but to help him in his work. Persons desiring immediate answer by mail or wire or a more elaborate treatment of any question—by the citation of authorities in a legal opinion, for instance—may obtain this kind of private service by the payment of a reasonable fee. The right is reserved to refuse to answer in this department any question, legal or traffic, that it may appear to us unwise to answer or that involves a situation too complex for the kind of investigation herein contemplated.

Address Questions and Answers Department,
**Traffic Service Corporation,** Colorado Building, Washington, D. C. 6

### Basis for Charges on Mixed Carload Shipments of Live Stock

**Colorado.**—Question: Would thank you to advise me your interpretation of the following rule as published by the carriers in the Western Trunk Line territory:

Mixed Shipments of Live Stock.—Live stock may be shipped in mixed carloads at the highest rate and minimum weight applicable on any of the species in straight carloads.

For example: Minimum weight on hogs, Pueblo, Colo., to Denver is 17,000 pounds, and on sheep 22,000 pounds. The rate on hogs, Pueblo to Denver, is 23 cents a hundred pounds, and sheep 21 cents a hundred pounds.

The carriers state where a mixed shipment of hogs and sheep move from Pueblo, for instance, to Denver, you assess the carload rate on hogs, which is 23 cents, on the minimum weight of sheep at 22,000 pounds.

I contend whichever specie at the minimum weight nets the carrier the most revenue, those charges are to be assessed; in the above case the charges for mixed shipment would be based on the sheep rate at the sheep minimum, whereas, the carriers would assess the rate on hogs of 23 cents at sheep minimum of 22,00 pounds, which they claim complies with the above rule.

Answer: Both a fair and literal interpretation of the rule quoted by you would indicate that the word "any" as used in the rule means "only one," of the species in the mixed shipment, and that both the rate-and-minimum-weight applicable to one of the species (as shipped in a straight carload), constitutes a single unit on which the carrier must base its freight charges. The sheep rate and sheep minimum weight, taken together, constitutes a unit, and the hog rate, taken with the hog minimum weight, constitutes another unit. The unit producing the greater amount of revenue will be taken as the basis on which to assess charges on the entire mixed shipment of hogs and sheep. In other words, the mixed carload shipment, according to our interpretation of the language used in the rule, is to be treated as though it were a straight carload of hogs (on which the hog rate and hog minimum weight would be protected), or as a straight carload of sheep (on which the sheep rate and sheep minimum weight would be protected), and if treating the mixed shipment as a straight carload of hogs yields greater revenue than treating it as a straight carload of sheep, then charges on the entire mixed shipment should be based on the hog rate and hog minimum weight, and vice versa, if treating the mixed car as a straight car of sheep would yield the greater revenue.

The rate and minimum weight of a given specie cannot be separated when that specie moves as a straight carload, no more can the rate and minimum weight of that specie be separated in a mixed carload under the rule under discussion. To illustrate: Shipper has a straight carload of hogs and a straight carload of sheep to move from Denver to Pueblo. If he can load both consignments into the same stock car and ship under one bill of lading, he may do so under the mixed rule; that is, he may load a straight car of sheep into the same equipment with a straight car of hogs, producing the mixed shipment contemplated under this mixed rule. The charges on the two-lots-in-one will be computed on basis of whichever of the single lots (or straight carloads) will yield the greater revenue to the carrier.

### Reconsignment

**Vermont.**—Question: A concern doing a large milling-in-transit busines, through error billed a car of grain products to a station which was intermediate to the correct destination. As soon as error was discovered consignors endeavored to change destination, but it was claimed car had reached billed destination and had been placed, therefore, local rate plus $7 reconsigning charge, would have to be assessed. As this was without question an error of shippers, would be pleased to have you advise if they should be penalized by being obliged to pay the additional charges.

Answer: You do not state what railroad handled your shipment nor what tariffs are involved, but the general rule in such cases is as shown in Maine Central Tariff I. C. C. C-2772. This publication, as well as the diversion and reconsignment tariffs of practically all other railroads in the United States, carries two rules, Nos. 10 and 12, which read as follows:

No. 10. "Diversion or Reconsignment to Points Outside of the Switching Limits Before Placement. If a car is diverted, reconsigned or reforwarded on orders placed with local freight agent or other designated officer after arrival of car at original destination, but before placement for unloading, or if the original destination is served by a terminal yard then after arrival at such terminal yard, a charge of $5.00 per car will be made if car is diverted, reconsigned or reforwarded to a point outside of switching limits of original destination."

No. 12. "Diversion or Reconsignment to Points Outside of the Switching Limits After Placement. If a car has been placed for unloading at original billed destination and is then reforwarded therefrom without being unloaded, to a point outside of the switching limits, it will be subject to the rates to and from the point of reconsignment, plus $5.00 per car reconsignment charge," etc.

You state the car was originally billed in error to a point intermediate to the correct destination, and that carriers contend shipment had reached the original destination and had been placed for unloading. Whether or not your shipment will be entitled to the through rate from original shipping point to final and correct destination, plus the reconsignment charge, or is entitled to be charged at the rate to and from the reconsignment point, plus the reconsignment charge, depends entirely upon whether the carrier is correct in stating the car was actually placed for unloading, at the original billed destination, before it could transmit your reconsigning instructions calling for delivery at the correct destination. If the car was in reality placed for unloading, and the carrier was not negligent in transmitting your reconsigning instructions, then the provisions of rule 12, above quoted, apply. If the car was not placed for unloading, then rule 10, above quoted, should apply.

If the car was consigned to a party located at the incorrect or first destination, and on his orders car had been placed for unloading, your shipment would be subject to rule 12. You do not give us any particulars as to whom the shipment was consigned; that is, whether to a party located at the first destination, or that the consignee was in reality located at the second destination. If the consignee was not located at or doing business at the first destination, but at the second, and evidence would indicate a mistake in billing to the first destination, we do not know on what grounds the carrier could base its contention that the car was placed for unloading, for very likely it would retain possession until its charges were paid and spotting instructions given, in which case, the car would not have been placed for unloading. If the latter was the case, you should, by all means, insist upon observance of the provisions of rule 10.

### Actions by Carrier Within Three Years

**Illinois.**—Question: In connection with your answer to "Illinois" in last Saturday's Weekly Traffic World in regard to a bill for undercharge on a shipment made back in 1915. In this connection we would like to know whether or not the provision of the new transportation act, requiring the carriers to present freight bills within three years, applies to the case in question. In other words, are the carriers barred from presenting this bill today, due to the fact that it is more than three years old?

Answer: Section 16, paragraph 3, of the interstate commerce act, reads, in part, as follows: "All actions at law by carriers subject to this act for recovery of their charges, or any part thereof, shall be begun within three years from the time the cause of action accrues and not after." Acts of limitation will be construed to operate prospectively only, unless the contrary intention clearly appears. There is nothing in the aforesaid act that creates the presumption that Congress intended to make the limitation period in which the carriers must begin their actions for charges retroactive. Ordinarily, the true rule for applying a statute of limitation to rights of action already accrued is to allow the party the statutory time for suing, computing it from the passage of the act, and to consider the limitation as commencing at the time when the cause of action is first subjected to the operation of the statute of limitation. So that, in shipments already completed, the time would run from the date when the act became effective. See the case of Sohn vs. Waterman (U. S.), 17 Wallace 596.

### The McCaull-Dinsmore Decision

**Pennsylvania.**—Question: In your issue of November 27, on page 1041, in article headed "McCaull-Dinsmore Decision," these words appear, "but as by the elimination of section 3, paragraph 3, of the conditions of the bill of lading." Please advise us what the item in question is. If these refer to old bills of lading, then the item in question is the item beginning with "except where the loss, damage or injury complained of" and ending with "then within the two years and one day after a reasonable time for delivery has elapsed." Do we understand from the letter above referred to, printed in your Traffic World, that this entire paragraph No. 3 has been eliminated? We understand that in the present bill of lading, section 2, paragraph 2, contains what was formerly section 3, paragraph 3, but that what was originally said in section 3, paragraph 3, in regard to the two-year time limit has been changed, but we have not

heard that all that was previously contained in section 3, paragraph 3, has been eliminated.

Answer: Two changes have been made in section 3 of the uniform bill of lading as published in Consolidated Classification No. 1. In accordance with the decision of the Supreme Court of the United States in the McCaull-Dinsmore case, paragraph 2 of section 3, which provided that the amount of any loss or damage for which any carrier is liable, shall be computed on the basis of the value of the property at the place and time of shipment under this bill of lading, including the freight charges, if paid, has been eliminated, while, in accordance with the opinion of the Interstate Commerce Commission in the Decker case, 55 I. C. C. 453, paragraph 3 of section 3 of the uniform bill of lading, as published in Consolidated Classification No. 1, has been revised and is now carried in Supplement No. 11 to Consolidated Classification No. 1, as paragraph 2 of section 3. Evidently reference should have been made to paragraph 2 of section 3 of the uniform bill of lading in the article published on page 1041 of the November 27 issue of The Traffic World, as the former articles to which reference is made therein deal in particular with the measure of damages in the event of loss or damage and not with the question of the period of time within which a claim must be filed or suit brought.

### Application of Tariff

**Ohio.**—Question: Referring to first article under your "Questions and Answers" column, page 1000, of your November 20 issue of The Traffic World, and having especial reference to the item in the American Railway Express Company Local and Joint Schedule of Express Rates No. 5, under caption of "Application of Tariff," which reads as follows: "Intrastate Traffic: This tariff will also apply on intrastate traffic in the following states, viz.: Connecticut, Delaware, New Jersey, Oregon."

The last sentence of your answer indicates that "The interstate rates under the application of the tariff in question apply on intrastate traffic only to the extent outlined in the second paragraph." Our understanding from that explanation would be that the rates apply on intrastate traffic only within the four states mentioned and, as far as we can see, there is no provision for intrastate rates within other states; for example, within Ohio. On calling the express company here, they are unable to give us any information, except it is their understanding that the rates quoted in tariff mentioned above apply for all movements in all states, whether interstate or intrastate.

Kindly advise definitely if these rates apply for intrastate movements within the states of Ohio, Indiana, etc.

Answer: In so far as we are able to determine from the records of the Interstate Commerce Commission, the tariff in question, namely, American Railway Express Local and Joint Tariff No. 5, is applicable on intrastate traffic only in the states of Connecticut, Delaware, New Jersey and Oregon.

### Notice of Claim Cannot Be Waived by Carrier

**Tennessee.**—Question: On December 15, 1919, we made a less-than-carload shipment to one of our customers, routing same from point of origin via the Missouri Pacific Railroad. About ten days later we made another less-than-carload shipment to the same customer and same destination, routing it from same point of origin via the Illinois Central Railroad; both shipments weighed practically the same and both were delivered about the same time. When the expense bills were received by our auditing department, the expense bill which should have been matched with the Missouri Pacific bill of lading was matched with the I. C. R. R. bill of lading and the other expense bill matched with the Missouri Pacific bill of lading.

There was a loss and damage claim to be filed on the shipment covered by the expense bill matched with the I. C. R. R. bill of lading and, in order to protect ourselves, we wrote the I. C. R. R. Company that we were preparing a claim and were advising them to that effect so as to be within the six months' time limit.

After getting all the necessary data together we filed claim against the I. C. R. R. Company, but, after investigating, that company found that the expense bill did not cover the shipment the bill of lading represented. We immediately looked up the matter, and, of course, supplied the Missouri Pacific bill of lading, with a request that claim be turned over to the Missouri Pacific R. R. Company. The Missouri Pacific Railroad declined to entertain the claim, as by the time it was turned over to them it was barred by the statute of limitations.

Has the railroad company the right to overlook our error in matching the expense bills and giving the claim notice to the wrong railroad or would it be discrimination for the railroad company to entertain our claim in view of the circumstances?

Answer: Inasmuch as through the error in filing notice of claim with the Illinois Central Railroad instead of the Missouri Pacific Railroad, notice was not given the latter carrier within the six months' period prescribed in the bill of lading, no recovery can be had on your claim.

So far as interstate shipments are concerned, it has been definitely settled that a stipulation in the shipping contract requiring notice of claim or damage cannot be waived. It was so held in G. F. & A. Ry. Co. vs. Blish Milling Co., 241 U. S. 190.

### Damaged Goods—Right to Abandon

**New York.**—Question: What is the correct procedure in New York state, where goods are received in seriously damaged condition, the cause of which is in dispute, the shipper contending the damage was caused by the carrier, and the carrier claiming damage was caused by improper packing?

Our attorney tells us that we have election either to take delivery and sue for actual damage, or reject and refuse to take delivery and sue for value of shipment.

Answer: As to interstate traffic, the rule, as supported by the decisions of the courts of a number of the states, is that where property is injured in transportation through the negligence of the carrier, but is not entirely worthless, the owner cannot refuse to accept it and sue for its market value, but may recover only for the injury. Where, however, the goods are injured so as to entirely destroy their value, the consignee may refuse to accept them and hold the carrier liable.

However, this question has not been definitely settled by the courts of New York. As showing the status of the question in that state, we are quoting from opinion of the courts in Brand vs. Weir (Sup. Ct., N. Y.), 57 N. Y. S. 730:

> In the event of a partial damage, the better rule seems to be that, where the goods were injured through a cause for which the carrier is responsible, the consignee is not justified in refusing to receive them, but should accept them, and hold the carrier responsible for the injury; it being the policy of the law to impose on the consignee the obligation to mitigate, as far as possible, the loss for which the carrier must respond. Hutchison on carriers, 770. In those cases where the partial damage consists in depreciation in the value of the goods arising from mere delay in delivery, the rule in this state is settled that the consignee must, in all but extreme cases, accept the goods, and recover his loss in an action at law. Scovill vs. Griffith, 12 N. Y., 509. Where, however, the partial damage is the result of injury to the goods themselves in the course of transit, the expressions of the courts are not uniform. It has been said that the consignee had an election to reject the property, and hold the carrier liable for its value or that he might accept the property and dispose of it to the best advantage and hold the carrier liable for the difference between the sum realized from the sale of the property and what it would have been worth had it been delivered in good order. Monell vs. Railway Co., 16 Hun 585. On the other hand, in a case in an inferior jurisdiction, it was held that where goods were, through the carrier's negligence, injured in transit, the consignee could not refuse acceptance, and claim their value at the port of delivery. Mills vs. Steamship Co. (City Ct. N. Y.) 5 N. Y. S. 258.

### Conflict Between Destination Shown on Bill of Lading and on Package

**Indiana.**—Question: Shipper executed bill of lading showing destination as Oakland, Indiana.; the shippment was tagged Oakland, Illinois, the correct destination. Without making any attempt to reconcile the conflict in destinations, the carrier's agent changed the tag to conform with the bill of lading. Consequently shipment was carrier to Oakland, Ind., and thence to Oakland, Ill. Claim for refund of charges in excess of through rate point of shipment, Oakland, Ill., has been declined. What is your opinion of carrier's liability? Your answers to "Indiana," Volume XXVI, page 184, and to "Nebraska," Volume XXV, page 200, have been noted, but do not exactly fit this case.

Answer: The Commission having held in the cases of Parlin & Orendorff Plow Co. of St. Louis vs. United States Express Co., 26 I. C. C. 561, and C. S. Brackett Co. vs. Great Northern Express Co., 29 I. C. C. 667, that a carrier is not liable for the freight charges incurred in transporting the property to the destination shown on the package, although the correct destination is shown on the bill of lading, we are of the opinion that the carrier would be held responsible for additional charges resulting from its changing the marks on the package to agree with the provisions of the bill of lading. The carrier under such circumstances should either forward in accordance with the marks on the package or secure from the consignor further instructions before forwarding the shipment.

### Damages—Proof of

**Louisiana.**—Question: My firm received a shipment of 12 sheets of copper from New York, routed Clyde Line to Jacksonville, S. A. L.-L. & N. to New Orleans. These sheets were switched to our shop, on car, and on arrival at our shop they were unloaded on our truck and sent to another shop for drilling. On arrival at this shop the sheets, or a portion of them, were found badly bent and were not in condition to be drilled. They were, therefore, sent to another shop to be rolled and placed in condition for drilling, for which an additional charge was made. There was no inspection made at the time of unloading and our shipping clerk failed to make a report of the transaction for about two months.

In view of the fact that no inspection was made, kindly advise if my firm has any recourse, should they have claim properly substantiated by affidavits?

Answer: While it is always best to notify the carrier at the earliest possible date of any damage to shipments, at the time of delivery if the damage is apparent, there is nothing to prevent the collection of damages for loss of or injury to freight, even though notice is not given the carrier promptly, if the proper proof can be made. While affidavits ought to be good

proof in support of a claim against the carrier as presented to the carrier, they would not, in themselves, have any probative value in court, merely as affidavits, but must be supported by the testimony of the parties who shipped and received the goods, either in person or through the medium of depositions.

**Embargo—G. O. C. Permit Not Contract of Carriage**

**Maryland.**—Question: Some time ago we shipped a consignment to our forwarding agents in New York for reshipment from there to a point in Mexico, the movement having been authorized by the customary G. O. C. Permit.

Upon arrival of this shipment at New York it developed that the port of entry into Mexico was closed on account of the prevalence of bubonic plague and, as a result of this, the shipment was subject to detention at New York for a period of nearly four months, accumulating storage charges in the meantime to the extent of $350.

Will you kindly advise if, in your opinion, this charge can be legitimately collected from the shipper?

Answer: As we understand it, it was necessary, during the time the ports were congested, for shippers to secure a G. O. C. permit before making an export shipment to a port of export, and, that a condition precedent to the issuance of the permit was the shipper having secured a booking for his freight on a steamer.

In the instant case we would understand that you had not taken out a through export bill of lading, but made your shipment to the port as a domestic shipment, to be later reshipped by your forwarding agents. Therefore, inasmuch as the carriers had not obligated themselves to deliver your shipment at its final destination by the issuance of a through bill of lading, you have no recourse against the carrier for the storage which accrued by reason of the embargo against the Mexican port of entry. In our opinion, the issuance of a G. O. C. permit is not an obligation on the part of the carrier to make final delivery of the shipment, even in an adjacent foreign country, in the absence of a through bill of lading contract.

## COAL ORDERS CRITICIZED

*The Traffic World Washington Bureau*

"It is the function of the Interstate Commerce Commission to regulate railroads and not to regulate industries," said the preliminary report of the Senate's special committee on reconstruction and production, submitted December 14 by Senator Calder of New York.

Referring to the service orders issued by the Commission to relieve the emergency in the transportation of coal, the report says the committee believes the issuance of those orders occurred without a full appraisal of their consequences by the Commission and that such orders have made opportunities for profiteering and have been injurious to general industry.

Discussing the effect of transportation costs on the house shortage situation, the committee said:

"The freight rates on building materials were increased some 50 per cent in June, 1918, and some 40 per cent in August, 1920, making a total cost of freight on building materials of nearly $2.10, as compared with $1 before the war, the total for other industries being about $1.75, compared with $1 before the war. Shortly after the appointment of this committee the transportation facilities of the country were allocated to coal movement through priority orders of the Interstate Commerce Commission, and the subsequent irregularities of delivery of building materials have been instrumental in bringing about the recent stagnation in the building industry. The committee believes that the issuance of ex parte orders by the Interstate Commerce Commission has occurred without a full appraisal of their consequences by the Commission and that such orders have made opportunities for profiteering and have been injurious to general industry. It is the function of the Interstate Commerce Commission to regulate railroads and not to regulate industries. The committee would direct the attention of the Senate committee on interstate commerce to this matter, with a view to amendment of the transportation act in order to check the issuance of ex parte orders. Intelligent supervision of transportation matters should insure the coordination and full use of railways, waterways, coastwise shipping and terminals, so vitally necessary at the present time.

"National development depends upon an ever-increasing supply of power. Heat is as necessary for production, in fact, for human existence, as is air or water; its use must be continued from day to day and cannot be deferred or interrupted.

"The nation is dependent upon coal as its chief source of heat and power, yet the production and distribution of coal is badly organized and subject to manipulation at the expense of the people.

"Coal profiteering, especially as it has followed the priority orders issued by the Interstate Commerce Commission, has continued unchecked by the Department of Justice, and is a national disgrace. Coal speculation has been permitted to monopolize the transportation facilities of the country, retarding necessary construction, and increasing the basic cost of manufacture and distribution of commodities in general. It has bled the home owners, public utilities and the industries.

"The imperative necessity of continuity of supply of fuel demands the fulfillment of contractual relations in this industry more than in any other, and yet one of the primary causes for the disgraceful and disastrous conditions during the past six months has been the repudiation of contracts. An exceptional demand not only brings about reckless and unwarranted repudiation of contracts made for delivery of coal, but the substitution of inferior quality at higher prices. Indeed, coal contracts are so drawn as to be breakable in delivery, in quality, and in price.

"Our investigation into the coal situation has convinced us that the private interests now in control of the production and distribution of coal, in spite of efforts by some, are actually unable to prevent a continuance or a repetition of the present deplorable situation, and that it is the duty of the government to take such reasonable and practical steps as it may to remedy the evil.

"An inherent responsibility of the government is the protection of its people. To assure the mining, transportation and distribution of coal at fair prices is a public duty from which the government cannot escape. But your committee believes that governmental administration of the production and distribution of coal should be a last resort, as governmental activities should always be directed toward encouragement of private initiative and enterprise.

"While the fulfillment of contractual relations is of first importance to the stabilization of the industry in the interest of the consumer, the producer and labor as well, your committee believes that the government should at all times be informed as to coal distribution and at this time recommends:

"That all coal operators, wholesalers, jobbers and retailers be compelled by statute to file at regular and frequent periods with some federal agency reports on the total tonnage produced or handled, the size and quality thereof, the amount of tonnage contracted for, the amount sold on contract and at spot sale, to whom, together with the prices made or received under such contracts or sales, and producers and distributors to make regular reports sufficient to determine their costs and profits, and the corporate interrelations or the communities of interest, if any, between companies producing and distributing coal.

"With this and collateral information in the hands of federal authorities for possible use by the Department of Justice and other government agencies, prevailing evils as to irregularity in deliveries, inferiority of quality, profiteering in prices, and undue monopoly of transportation facilities should to a great extent be eliminated. But if no other remedy can be devised, it may be necessary to enact some form of federal licensing to meet the situation.

"Fuel thrift by the small user and fuel thrift by the large user through storage, scientific combustion, and transmission should be strongly encouraged by the federal government."

Senators Calder, chairman, Kenyon and Edge, of the special committee, issued statements in regard to the preliminary report, Calder and Edge referring to the Interstate Commerce Commission. Senator Calder said in part:

"Profiteering has been rampant and must be eliminated, and the committee believes that actual costs of production may be reduced through improvement of national facilities, notably fuel and transportation. The committee believes that the activities of the Interstate Commerce Commission must be directed toward regulation of the railroads, rather than of industry in general. Existing conditions in the production and distribution of fuel, a most important basic factor, must be corrected. Labor efficiency may be materially improved. Capital will invest in construction work when it becomes a paying proposition, unless driven away by taxation, which therefore becomes an important factor.

"The committee is preparing and will soon submit and urge early favorable action upon measures in line with its recommendations, which are based upon a careful study of the whole situation.

"Its present report is, in a sense, an introductory one, and it asks continuance of authority in order to prepare more detailed statements on the various factors entering into present conditions, and more particularly for the preparation of the measures referred to."

Senator Edge said:

"First, it must be understood that this is only a preliminary, or introductory, report and by no means embodies all the findings, nor virtually any of the concrete, constructive recommendations the committee proposes to present. You might call it a sort of warming-up canter.

"There is little question in my mind that some legislation will be required to straighten out the fuel situation, especially as it affects the average home and the people as a whole. The people must have coal, they must have it in adequate quantities, it must be of first class quality, and it must be sold at a reasonable, legitimate price. From the evidence presented at the committee hearings, I am about convinced that the coal industry cannot bring order out of the prevailing chaos and give even reasonable relief to the suffering people, so I am ready to modify

somewhat, in this case, my opposition to government intrusion into private business and to advocate legitimate scrutiny.

"As to the nature of the necessary legislation, the details must be worked out by common counsel, so that the best results may be obtained with as little delay as possible, and the remedy be made permanent, instead of only temporary. The legislation, too, must be as simple as it can be made, to preclude red tape and court entanglements, but it must be absolutely effective. It is high time that we put business clarity into our legislation, and not make it merely a bone over which the legal fraternity can wrangle.

"In a general way, it looks to me as though revision or amendment of the Interstate Commerce Commission law might be necessary. At present, that body seems to have almost autocratic powers and to be virtually free from accountability to the executive or legislative branches. It apparently acts, on its own initiative, through Ex Parte orders on lines which were not contemplated in the theory on which it originally was constructed. Its present judicial powers might well be transferred to the courts, and its administrative powers to some agency to be established to take them over. For instance, a division on fuel and another on transportation might be opened in the Department of Commerce. Such departments could be empowered to see whether contracts were respected in the coal industry, as they are not at present; they could cure the crying evils of reconsignment as now practiced by the coal men; they could detect monopoly of cars by producers or dealers, and any scheme by which some groups might be deprived of cars—there are a thousand and one evils that might be exposed. Then, evidence could be presented to the appropriate prosecuting authorities for action under existing laws against restraint of trade, and so on. I believe we have enough laws now on the statute books for the punishment of most of the wrongful action that might be exposed, if only these laws were enforced; if not further laws can be provided for the purpose.

"Production, transportation and distribution are the three chief points involved, and I think Congress can provide reasonable government supervision and the regulatory powers without government bureaucratic control or participation in private business, and with protection for the people, without oppression of any industry."

Senator Kenyon said the housing situation was a menace to the nation and that as to coal, a way would be found to prevent "this continuous plundering of the American people."

"Some of us are growing tired of appealing to the coal barons to cease robbing the people," he declared.

In conclusion the committee said:

"The committee believes that unless the federal government continues to stimulate co-operation of those engaged in labor, transportation, finance, and fuel production with those engaged in general construction that the growing scarcity of homes may eventually force upon the government an undesirable participation in the housing business, and it therefore seeks authority to continue its investigations and to formulate data which it gathers in support of the recommendations which it may make."

### Cushing on Coal Report

George H. Cushing, managing director of the American Wholesale Coal Association, in a letter to Senator Calder, chairman of the Senate committee on reconstruction, took exception to some of the things said about the coal trade but agreed with the declaration that the Interstate Commerce Commission should regulate transportation and not industry. He said in part:

"Especially, I am furthest from criticising your committee because it said that the Interstate Commerce Commission should regulate transportation and not industry. Indeed, when the building material people went before the Commisison on July 8 and 9 to plead for equal treatment with coal, in the matter of car supply, I gave testimony in their behalf. I said that the coal trade could produce the needed coal even if the building material people were allowed to have their cars in their proper season.

"Where I feel that your report falls short of doing simple justice to coal is in the following particulars:

"1. The dislocations in business have been general and world-wide. They have not been confined to the housing program of the United States. The same difficulties which the building industry faced have encompassed the coal trade. A little more emphasis upon this fact and a little less of sweeping condemnation of the coal trade might have made your report more fair.

"2. We all have, of recent years, been insisting upon a new and rather high standard of business morality—this being insisted upon especially during the war—but of late there has been, due to superior temptations, a general and lamentable lapse from even ordinary business morality. A little more emphasis upon that important fact, recognition, perhaps, that our public standards had outrun the capacity and practice of private individual; and recognition that this hiatus was not peculiar to coal would have made your report seem somewhat more fair to coal.

"3. The practices about which you complain were in no sense general within the coal trade. However, your condemnations are sweeping. They are not modified by any statement which would indicate that there is possible any discrimination between the coal trade as a whole and the worst offenders in it.

"On the contrary, when your report speaks of the vicious practices in the building trade it carefully localizes that immorality. If the same care had been taken to localize the bad practices in the coal trade, the effect would have been, it seems to me, to give your report a tone of greater fairness.

"4. The facts are that the coal trade practices of which you complain amounted merely to a market explosion. This was the direct result of many things, but principally it sprang from the removal of restrictions which had been extremely severe. And this explosion operated only through six months. This is a far shorter period than is covered by the charging of high prices in any other industry.

"Also, the fact is that the coal industry, through a long and eventful history, has never been guilty of any similar offense. On the contrary, it has been underpaid through 113 years rather than overpaid. I see no sympathetic note in your report on this account. I see no recognition of the great part coal has played in building up this country's industry. I see no recognition of its ready compliance with governmental demands whenever and wherever expressed. I see no recognition in your report of the repeated and strenuous efforts of the coal trade during last summer to police its own actions. Instead, I read only your unqualified censure. I think this breathes a spirit which might, if I may be allowed to suggest it, be more fair.

"5. The facts are that the coal trade was striving to satisfy the home demand for coal and at the same time to build up an export trade that our foreign commerce might have a foundation of coal upon which to invite other business. This attempt to add a new department to our normal trade in coal naturally brought about a temporary dislocation in our domestic business. I believe your report could, without damage to its purpose, have recognized this fact.

"6. In your recommendations—which in the main are excellent—you propose that sort of a study of the coal trade which has a tendency to put it perpetually uder suspicion. At the same time you propose a bureau to encourage—and not criticise—the building trade. I personally believe that your report would have had a tone of greater fairness if these contrasting recommendations had been omitted.

"While I believe that these features of your partial report are unfortunate, I do not want it understood that I am in any sense hostile to what you are trying to do. I am writing this in the hope that when you make your full and final report the unfortunate impression left by this partial report may be removed. In the meanwhile, if there is anything that I or the members of this association can do to give you, in any reasonable detail, the facts about coal, please feel free to call upon me or them."

## COAL CAR DISCRIMINATION

*The Traffic World Washington Bureau*

The United States Supreme Court, December 13, denied the petition of the Lambert Run Coal Company in No. 585, Lambert Run Coal Company, petitioner, vs. The Baltimore and Ohio Railroad Company, for a writ of certiorari to the United States Circuit Court of Appeals, Fourth Circuit. This is the suit in which discrimination in the supply of coal cars is charged against the defendant by the coal company. The case is in the Supreme Court on appeal and the action of the court in denying the writ prayed for, therefore, does not mean that the court will not pass on the questions involved but that it will not do so on a writ of certiorari.

The petitioner set forth that the writ was asked for in case the court should hold it was without jurisdiction of the appeal.

In its brief in support of its prayer for the writ, the petitioner said in part:

"The record in this case presents the following questions:

"1. Whether paragraph (12) section 1 of the Interstate Commerce act requires that during coal car shortages, every carrier by railroad shall apply the mine ratings of all mines served by it, and distribute all available coal cars in accordance with such ratings.

"2. Whether, assuming that paragraph (12) does impose this requirement, the Interstate Commerce Commission, acting under the emergency powers conferred by paragraph (15) of the same section, has authority to suspend the car shortage provision of paragraph (12), and direct that mine ratings shall not be applied.

"These questions are novel, and of extreme importance, not only to petitioner and all other coal producers, but to the general public.

"The decision of the circuit court of appeals that the Interstate Commerce Commission's order directing a method of car distribution different from that prescribed by paragraph (12), was a valid exercise of the authority conferred on the Commission by paragraph (15), necessarily involves the erroneous proposition that the Commission, in the exercise of a purely administrative power, may suspend the operation of a substantive

provision of the Interstate Commerce act, relieve the carriers of a specific duty imposed by that provision, and prescribe a rule imposing a different duty.

"The question of the legality of the method of car distribution practiced by the respondent is not only of vital importance to the petitioner and all coal producers similarly situated, but it is also a matter of serious public consequence, since the railroads are enabled by the use of this method to shift the entire burden of the increased cost of coal caused by car shortage to other coal consumers.

"There is a division of opinion in the federal courts as to the construction and effect of paragraph (12), and an authoritative decision by this court is necessary in order to prevent uncertainty and confusion as to the principle of coal car distribution which it establishes."

## L. & N. CAR SUPPLY CASE

*The Traffic World Washington Bureau*

W. L. Andrews, vice-president of the Consolidation Coal Company, in a letter, takes exception to the statement in the Traffic World of November 27 concerning the Commission's investigation of the car supply on the Louisville & Nashville, that "in effect, the proceeding was the airing of a complaint by the Consolidation Coal Company that the railroad company is not furnishing cars enough to enable it to carry out its conservative contracts to supply public utilities." He also says the suggestion that mine operators backing the application of the Laclede company for a priority order would report the facts and reasons which caused the Commission to deny the application "is almost scandalous."

The proceeding was nothing of the kind, Mr. Andrews says; on the contrary, he says, it was a hearing brought about by the application of the Laclede Gas Company for a priority order (as stated in the report); that the Consolidation was asked by the Commission to be present; and that the only thing the officers of the coal company did was to state such facts as were germane to the inquiry. One of the facts brought out was that the Consolidation had a contract to supply the gas company and that it was considered conservative. Mr. Andrews further says the Consolidation did not back the application. The suggestion that operators backing the inquiry would report facts not reported by the Commission, therefore could not apply to the Consolidation.

The impression that it was an airing of a complaint by the coal company was created by the facts brought out, and especially by the fact that the two vice-presidents were stating the facts which might be taken to support an allegation that the L. & N. was not supplying enough cars to enable conservative coal operators to carry out their contracts with public utilities. They sat on one side of the table around which those engaged in the matter were seated.

On the other side of the table Mr. Haylo, of the L. & N., was offering facts tending to show that the L. & N. was doing all it could to meet the situation.

## REPORT OF POSTMASTER-GENERAL

*The Traffic World Washington Bureau*

The total number of pieces of parcel-post mail handled in the fiscal year ending June 30, 1920, is estimated to have exceeded 2,250,000,000, according to the annual report of the Postmaster General to Congress under date of December 13.

The average cost of delivery per parcel was reduced from $0.0104 in 1913 to $0.006 in 1916, the report says, and in 1917 this cost had increased to $0.0071, while in the past two years there was a further increase to $0.0145, the highest since the inauguration of the parcel post service. This increase of 100 per cent in three years is attributed to increased size of parcels, increased salaries of carriers and chauffeurs and increased cost of equipment.

"It is estimated that the revenue derived from parcel post mail is now approximately $150,000,000 annually, indicating a profit of about $10,000,000 per annum," a summary of the report issued by the Postmaster General says. "This is the only transportation agency which has not increased its rates or declared embargoes or priorities and which now transports and delivers merchandise with the same celerity as before the war.

"Due to the abnormal conditions which prevailed as a result of the war, the department found it impracticable from April, 1917, to October, 1919, to keep any statistical record of parcel-post mail handled. From October 1 to October 15, 1919, such record was made, and this disclosed that while the increase in the actual number of parcels mailed was not so pronounced, the total weight of parcels carried and the postal revenue derived therefrom increased more than 55 per cent. This was directly due to the extension of weight limits from 50 to 70 pounds in the first three zones and from 20 to 50 pounds in all other zones. Not only are additional commercial and industrial concerns constantly availing themselves of this convenient and economical method of transportation, but with the increased weight limits the older patrons of this service are now consolidating into one package a number of parcels for a single customer which were formerly mailed separately, and are sending by parcel post heavier parcels which previously were shipped by freight or express. Other factors in the added volume of business were the admission of fruits and vegetables to this class of service and the provision of law for forwarding or returning perishable parcels without awaiting prepayment of the necessary additional postage, which is now collected upon delivery.

"Manufacturers and business men generally have rapidly become aware of the many advantages of this means of transportation, which has resulted in an almost unbelievable growth of this branch of the service.

"While the department is constantly giving attention to the improvement and extension of this branch of the service, its growth has been so phenomenal that it has required the utmost vigilance and effort, and greatly increased expenditures, to provide the necessary additional facilities, such as floor and platform space, vehicular equipment, clerical and carrier assistance. In many cities the post-office quarters available in federal buildings, constructed years ago, have long since been outgrown, necessitating the leasing of large areas of space at high rental rates. There is no question that this service will continue to expand in future years, requiring increasing appropriations if its needs are to be adequately met, and the department must take steps to provide facilities for the service. Facilities must be increased to meet the volume of business or the volume of business must be reduced to the capacity of our present facilities.

"The number of parcels is becoming so great that in the large cities facilities should be had at the railroad depots or as convenient to the depots as possible for their handling. A number of stations have been rented in the large cities as conveniently located as possible to the depots for the purpose of handling parcel post. In such instances the larger parcels will be segregated from the other mail and handled from these depots.

"Insurance was extended to all parcel-post shipments upon which the consignor desired protection against loss, though a large percentage of parcels diverted from freight and express channels, during transportation difficulties, consisted of perishable foodstuffs. As a result of these diversions the number of parcels insured during the year reached the enormous total of 95,384,808, on which the insurance fees amounted to $5,415,861.24, an increase in number of parcels insured of 25,386,919, or 36.27 per cent over the previous fiscal year 1919.

"There were approved during the year 154,754 claims for indemnity on account of insured parcels mailed during the fiscal year 1920, amounting to a total of $1,379,060.32, an average of $8.96 per claim.

"The growth of the collect-on-delivery service during the year has been remarkable, extending throughout the country and not confined to large commercial centers. During the year 20,098,427 parcels were handled in this way, showing an increase of 39.87 per cent over the previous year. Indemnity was paid on 16,894 claims, averaging $7.84 per claim, at a total of $134,-451.70."

### Railway Mail Pay and Service

Discussing the Railway Mail Pay case, the Postmaster General approves the finding of the Commission establishing the space-basis system, but contends that the rates fixed by the Commission under the decision are too high. On that question the summary says:

"It is clear that the Post Office Department's contentions were rational and that the increased cost of transportation of the mails can not be considered as permanent, but in common with other unusual expenditures in commercial and governmental activities, are transient phases of the economic convulsions incident to the World War. The department, however, insists that the rates fixed are too high, even under the circumstances related, and at once petitioned the Interstate Commerce Commission for a rehearing of the case in accordance with the provisions of the statute, and it is believed that the operation of the service under the new rates will demonstrate that they are excessive and illogical, and that the commission will ultimately make equitable adjustment."

"The service rendered by the railroads has steadily improved over that rendered during the war," the summary states with respect to railway mail service. "However, there is yet room for improvement, especially with respect to the practice of railroad officials to order the departure of trains on schedule time even though letter mails from connecting trains in the same station may not be loaded. Statistics for the four-week period, February 15 to March 13, 1920, show that there were 518 departures of trains where letter mails from connecting trains were in process of being loaded, involving 646 pounches estimated to contain approximately 1,000,000 letters, or a daily average of nearly 37,000 letters.

"Statistics taken during the period February 15 to March 13, 1920, show that there were 74,643 failures of mail trains to maintain scheduled connections, or a daily average of 2,665 failures, involving a total of 143,410 pouches, 911,709 sacks, and 138,423 outside parcel post and news dealers' packages. It is estimated that each pouch contained 40 packages of letters with

40 letters in each package, aggregating 229,456,000 letters, or a daily average of 8,194,857 letters. It is estimated that 48,320,577 papers were delayed, or a daily average of 1,725,734 papers. The delays aggregated 1 to 24 hours."

### International Parcel Post

"There was an increase of 108 per cent in the international parcel post transaction, 35,000,000 pounds of parcel post being mailed to foreign countries," the summary continued. "There is practically a parcel post service to every part of the world, and those countries now without a parcel post agreement with the United States or which can not be reached through the intermediary of a third country are mostly countries to which the question of railroad or steamship transportation is impracticable of settlement. Hungary was one, supplying an illustration, since that country was unable to secure transit through Austria owing to a labor boycott maintained by Austrian labor organizations against shipments intended for Hungary. Following the ending of the fiscal year, and on October 16, 1920, parcel post service was resumed with Hungary.

"Efforts are being made to standardize the service with respect to the use of a uniform number of customs declarations; the possible employment of invoices as an alternative to the use of declarations; a uniform method of packing packages; and, wherever possible, to provide for a lower transit rate than that now charged."

### Improvement of Highways

Improvement of highways to facilitate the transportation of rural mail is advocated by the postmaster-general.

"Through such improvement of the highways and their use in the transportation of foodstuffs, it would be possible to convey an average of not less than 1,800 pounds a day per route as compared with 24 pounds at present conveyed," the report said.

## MISS. RATES AND CLASSIFICATION

*The Traffic World Washington Bureau*

Application for the co-operation of the Interstate Commerce Commission, under section 13, of the interstate commerce law, in the abolition of the Mississippi classification and modification of Mississippi class and commodity rates was made to the Commission, December 9, by B. F. Martin, speaking as the representative of the attorney-general and the railroad commission of Mississippi. (See Traffic World, Dec. 11.) This unusual request was made as the chief part of the argument on No. 9332, Memphis Freight Bureau et al. vs. Illinois Central et al., in behalf of the Mississippi commission which admitted that the Mississippi classification and the Mississippi scale of class rates constituted an unjust discrimination against the Memphis complainants. He said the rates for distances of less than 100 miles were improperly related to distances greater than 150 and the relationship of the class rates, one to another, was improper.

The immediate cause for the request is to be found in the fact that in the tentative report on the Memphis complaint the examiner recommended rates for distances as great as 180, and the abolition of the Mississippi classification for distances up to 180 miles. Martin said that would leave an already bad situation still worse.

Mississippi has realized that the classification and class rates are bad even for Mississippi shippers, Martin said, but the time has not been opportune for the Mississippi commission to do any work on them for the reason that the instant complaint has been pending since 1917. That fact, joined with the fact that everybody has been busy with war work, has made it impossible for the Mississippi commission to find a way for dealing with the situation.

Commercial organizations in the state, Martin said, took the matter in hand on November 30 by filing complaints with the Mississippi commission showing the disadvantage under which Mississippi shippers work and under what disadvantages they would labor if the Intertate Commerce Commission should abolish the Mississippi classification for distances of 180 miles and substitute Southern classification, leaving the Mississippi rates in effect. Martin said the commercial organizations, in their complaint, cited instance after instance in which the rates within Mississippi would be higher, for like distances, than in the territory covered by the Commission's scale in the Memphis-Southwestern case, for application in the more sparsely settled regions west of the Mississippi river.

"Why couldn't the Mississippi commission undertake that work," asked Commissioner Aitchison, before Mr. Martin had made his application but after he had pointed out the disruption that would be caused by the adoption of the tentative report in this case and after he had said that the federal body should not take any action in the matter until it was prepared to deal with the whole subject of Mississippi classification. Answering a question by Commissioner Hall, Mr. Martin said that the complaint of the Mississippi commercial interests did not cover the commodity rates but that the relation between the class rates and the commodity rates was so close that before any progress could be made in the classification matter it would be necessary to take up the subject of commodity adjustment.

The proposal made by the examiner in the case under discussion is not satisfactory either to the Memphis complainants or to the Mississippi commission. The former filed more objections to it than the Mississippi officials. Their chief contention against the report is that the basis proposed is too high and that the rates are not mileage rates at all but group rates which, in some instances, are higher than those prescribed for similar distances by the Commission in the Memphis-Southwestern investigation.

T. K. Riddick, for the complainants, in answer to a question by Commissioner Eastman, said the increases and reductions suggested by the examiner's report would amount to a stand-off; in other words, that the adoption of the report would mean no more, in a revenue sense, than that the judgment of the federal body had been substituted for the judgment of the Mississippi railroad commissioners. Mr. Riddick said adoption of the report would not result in the removal of the discrimination against which Memphis had brought complaint, but, rather, its mere shifting from one place to another. He made particular objection to the adjustment on cottonseed products in which, he said, Memphis was extremely interested. Rates on packing house products proposed by the examiner, he said, would be higher than rates on that class of traffic in the territory west of the Mississippi River, and that, he suggested, would be an unsatisfactory outcome, because Memphis was soon to have a "sure-enough" packing house. Adoption of the rates proposed by the examiner, he said, would prove a handicap to the new industry from the start.

## CREDIT ON FREIGHT BILLS

*The Traffic World Washington Bureau*

A hearing was held December 13 by Assistant Chief Examiner Ulysses Butler on Ex Parte No. 73, in the matter of credit for the payment of freight bills, with a view to determining what shall be done to meet a situation caused by the independent boat lines which do not observe the rules of the law which definitely directs "carriers by railroads" to collect their freight bills promptly. Under the rules prescribed by the Commission, not more than ninety-six hours of credit may be extended by the railroads to shippers for checking freight bills and sending in the money.

The hearing was caused by the fact that independent boat lines have been giving thirty days or more of credit to shippers. Some of the boat lines having joint through rates in connection with railroads and some railroad-owned boat lines have also disregarded the Commission's rule to collect promptly. They claim they had to do that to meet the competition of the independent boat lines. One railroad-owned boat line is said to have lost forty per cent of its business to the independent lines when it undertook to enforce the no-credit rule.

At the hearing T. J. Norton, for the Santa Fe, which owns no boat lines, in a colloquy with L. T. Wilcox, a witness for the Union Pacific, which has met the competition of independent boat lines, took the position that the law obviously meant that the no-credit part of the law applies to rail-and-water carriers. Mr. Wilcox said he hoped the construction placed on the words "carried by railroad" as used by Congress in the no-credit paragraph of the third section of the interstate commerce law by Mr. Norton would prevail, but personally he thought it plain that Congress intentionally or otherwise, had limited the no-credit paragraph to railroads. He agreed with Mr. Norton that the object of the law was to enforce prompt collection so as to prevent discriminations, and that in every other part of the law language had been used which, under the definations made by Congress itself, showed its intention to include rail-and-water carriers. In the second paragraph of the third section, however, the limitation was to "carriers by railroad." Mr. Norton said that if the Union Pacific, to meet competition on the Columbia River, obtained relief to depart from that rule, the object of Congress would be destroyed, because the breaking down of the law would extend in every direction.

Frederic D. McKenney, for the Pennsylvania and B. & O. made application, at the hearing, for either a modification of the Commission's rules, or a construction of the law which will enable those carriers to continue doing, with freight bills on export stuff delivered direct from railroad cars or from railroad piers, what they are doing at Baltimore. When delivery is made to steamships from railroad cars or from railroad piers, the freight bills are not collected until ninety-six hours after the loading of the ship is completed. No attempt is made to collect the freight on each carload as it is delivered to the steamship.

James A. Fahnestock, treasurer of the Pennsylvania, explained the intricacies of steamship accounting, which he knew before he became treasurer of the Pennsylvania, to show that the Commission should allow a continuance of what the Pennsylvania and B. & O. are doing, particularly at Baltimore where the question arose.

Edward L. Copeland, treasurer of the Santa Fe, in behalf of the Society of Railway Financial Officers, and Arthur B. Jones of the Chicago & North Western, explained the situation as witnesses in behalf of the contention that the rule should be made plain as applying to rail-and-water carriers.

## POSITIONS WANTED OR OPEN

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# The Open Forum

A Department for the Discussion by Readers of THE TRAFFIC WORLD of Transportation Questions of Interest to Traffic Men

## INTRASTATE RATE ADVANCES

Editor The Traffic World:

I see that in an editorial in your issue of December 4, entitled "The Goring of the Ox," you ask some questions which are suggested to you by my argument in the Iowa rate case. As a premise you make the following concession:

"It is not always wise to exercise even an admitted or uncontested power." You then proceed as follows: "But the question we wish to ask here is why did not Mr. Benton and his associates among the state commissioners raise that same issue with themselves when they considered refusing to ratify, intrastate, the action taken by the Commission in increasing rates under the transportation act? * * * Was it wise for the state commissions—even assuming that they are within their legal rights—to raise the question of jurisdiction at the risk of upsetting the entire plan for putting the carriers on a proper basis?"

You will agree that it is not possible to discuss forty-eight cases at once. Your editorial discusses my argument in the Iowa case. In brief, what I did in that argument was simply to point out that the only authority having jurisdiction over passenger rates in Iowa is the legislature; that within a month it will be in session—before rates prescribed by the federal Commission will be put into effect by compulsion—and that, assuming power on the part of the federal Commission to force rates upon the state, it would be well to delay doing so until the Iowa legislature has had opportunity to act.

I do not understand that even you contend that a state commission should attempt to regulate rates over which it has no jurisdiction. At any rate, in your editorial in your issue of September 25, you said: "We can well understand how a state commission, whatever its opinions or desires, would hesitate to overrule the legislature which created it." The Iowa state authorities which have been asked to act have granted the desired increases in state rates over which they have jurisdiction. In other words, the Iowa authorities have acted exactly as you say they should have acted. Accordingly, the question which I desire to ask you, for the benefit of your readers, is, why do you think that particular ox should be gored at this particular time?

John E. Benton, General Solicitor, N. A. R. U. C.

Either we are unusually unfortunate in our choice of language or Mr. Benton is unusually dull in getting the point. We were not discussing the merits of the Iowa case at all, but merely Mr. Benton's argument that, even assuming that the Commission had jurisdiction, it would not be wise to exercise it; and we asked why Mr. Benton and his associates among the state commissioners did not apply that argument to themselves and, even assuming that they and not the Commission had jurisdiction, refrain from exercising it. Manifestly we were not talking merely about the Iowa case when we asked that question, but about any case or all cases in which the state commissions and Mr. Benton have seen fit to question the jurisdiction of the Interstate Commerce Commission in seeking to apply the transportation act in the matter of railroad revenue.—Editor The Traffic World.

## INTRASTATE RATE ADVANCES

Editor The Traffic World:

I have been a subscriber for The Traffic World for a great many years and have read it with great interest, and in recent years I have not been in sympathy with your position in a great many matters. For instance, your article in your number of December 11, containing strictures upon the views and opinions of Mr. Eastman. You admit Mr. Eastman has a right to his opinion and has a right to express it, but then you criticize him later on for making a statement that does not coincide with your views and views of other members of the Interstate Commerce Commission. Mr. Eastman's views, I venture to state, represent a larger number of the citizens of the United States than your views or the views of the majority of members of the Interstate Commerce Commission.

The railroads are in the saddle and, in my mind, they are riding fast to their finish. The people are not being fairly treated. They promised all sorts of readjustments if they were just allowed to increase their tariffs and I have not been able to find a man who will stop and listen to me when I call his attention to the injustice of certain rate constructions that have been brought about by these overnight increases. It is the view of a great many of the most prominent jurists in the United States, as well as men of good business ability and clear thinkers that the Interstate Commerce Commission is according itself a great many powers that were never given to it by Congress, for the simple reason that Congress did not have the power to give. The Constitution of the United States provides that Congress shall have jurisdiction over transportation between the states, territories and foreign nations, and of recent years the Interstate Commerce Commission has taken the position that it has more powers than the people who created it. Congress has not any power that is not given to it by the states, and the states certainly elect their intrastate commissioners, and they are nearer the fountainhead than Congress is, and I cannot understand why it is that in all these controversies you seem to take the side of the carriers against the shipper. In my judgment the intrastate commissioners are an anchor to the windward

It is a dangerous proposition to put too much power in the hands of a few people and I think the position the Interstate Commerce Commission has assumed is the first step in making a complete change in the interstate commerce law. I believe the intrastate commissioners throughout the United States should select one member of its body as a member of the Interstate Commerce Commission, and in that way have forty-eight commissioners represent the various elements of our body politic all over the United States, and it would make it that much more difficult for it to be influenced either by the shipper or by the carrier, and I believe that as soon as the United States will force the change of this law and will divide the responsibility and put it on more heads than upon the few heads that now constitute the Interstate Commerce Commission, the better it will be. Every time that I read anything in The Traffic World that points toward the annihilation of the intrastate commission, I can see that there will be a reaction that will tend to harmonize the interests of the state commissions with the Interstate Commerce Commission, and it can only be done by having the Interstate Commerce Commission ex officio members of the state commissions, and thereby work in harmony with each other. I am satisfied that as long as these bodies are independent of each other there will be friction, for the interest of the carrier is to elect as few men as possible to have control of the traffic of this country, and the interest of the shipper is to have that responsibility divided by as many people as it is possible.

The shipping public has been very liberal in the matter of accepting the Interstate Commerce Commission's adjustment of freight rates, but the carrier has not been liberal in the administration of these rates. They have taken every possible little picayunish advantage in trying to extract the last drop of blood that can be squeezed out of every shipment made, and the shippers throughout the country are very fast becoming dissatisfied with the present conditions, and it is not only the shippers of merchandise, but it extends to the farmers and all classes of manufacturers and I hear complaints everywhere.

It seems to me you had better tread tenderly upon these state right powers, because it is sure to react. You cannot assume powers that are not given to you by the people, and if you do you will be called upon for an accounting.

S. A. Walker, Vice-President,
Acme Cement Plaster Co.

St. Louis, Dec. 13, 1920.

We find nothing inconsistent in our statement that Mr. Eastman has a right to his opinion and our criticism of that opinion. We hope Mr. Walker is not right as to Mr. Eastman's views favoring government ownership representing a larger number of citizens than do ours. Every indication is that that is not a correct statement, though, of course, it is a matter of judgment, or guess, there having been no vote taken on the question. Mr. Walker is wrong when he says The Traffic World favors the annihilation of the state commissions. We have said nothing of the sort. We merely say that the Interstate Commerce Commission, in our opinion, has jurisdiction of the intrastate rate question now in controversy and that the state commissions ought to permit it to act without throwing obstacles in the way. Mr. Walker is badly misinformed or he would not have the idea that we are favoring the carriers as "against the shippers" when we take the course we do, or that shippers are arrayed in opposition to the carriers on the question of the Commission's jurisdiction over intrastate rates.—Editor The Traffic World.

## MEASURE OF DAMAGE

Editor The Traffic World:

In connection with two concrete cases which I have negotiated with the western carriers since publication of the McCaull-Dinsmore decision, it is obvious, at least to me, that the particular carriers with whom I have dealt have no intention of

computing loss and damage claims on basis of the destination valuation. Further than that, one of the carriers has even refused to make adjustment on basis of the market value time and place of shipment, contending that under the McCaull decision carriers could only pay invoice price, because, as they express it, "the full actual loss suffered" is the measure of liability under the Supreme Court's decision and what the claimant paid for the goods represents his "full actual loss." Below are quoted details of these cases:

1. Covers one package of hosiery shipped by Milwaukee Hosiery Company from Milwaukee, June 12, 1920, to Paul B. Hay, San Francisco, and this shipment was forwarded several months subsequent to contract of sale. Our claim was based on market price time and place of shipment, which was higher than contract price, and shipment was invoiced on the contract basis. In connection with this claim we received a letter from freight claim agent of interested line reading as follows:

> This shipment moved under bill of lading which contains provision that "the amount of any loss or damage for which any carrier is liable shall be computed on the basis of the value of the property at the time and place of shipment under this bill of lading, including the freight charges if paid." In view of that provision of the contract your client's claim was properly based but the Interstate Commerce Commission and the Supreme Court of the United States have ruled that such limitation of the carrier's liability is null and void, and that the true measure of damage is "the full actual loss suffered" by the owner of the goods. In this instance it is apparent that the full actual loss suffered by your client is the cost of the goods to him plus freight which is my reason for writing you on November 20th with request that your bill be amended accordingly.

Thus we have a clear-cut instance where the carrier is going back to the basis used prior to 1912, i. e., invoice price time and place of shipment.

2. The case involving destination value covered two packages silk shipped by Ozdoba Bros., New York, October 9, 1919, to B. Hart & Bro., wholesalers and jobbers, of San Francisco, invoiced at $2 per yard. Prior to arrival about one-half of the goods had been sold by B. Hart & Bro. to a retail concern, at San Francisco under a written order, for $2.40 per yard. One case checked short and the case which arrivel was sold for amounts ranging from $2.40 to $2.50 per yard. Thus the claimant, B. Hart & Bro., established, at least to their satisfaction, the fact that shipment had at destination a value of $2.40 per yard and claim was presented on that basis. The carrier, which was not the same road mentioned in the first case, did not question destination value as the correct measure of liability, but contended that $2.40 was in fact not the destination value and that San Francisco could not be considered as a wholesale market point. In view of this carrier felt warranted in going back to what they considered the next available market point, New York, which would give claimant adjustment only on basis of invoice price of $2 per yard.

Before going further, let us here carefully consider the fact that western carriers, instead of progressing forward from point of origin value to destination value, are "progressing" backward to the old invoice valuation, which was eliminated entirely from discussion over eight years ago by the Interstate Commerce Commission in Conference Ruling No. 387, November 11, 1912. In numerous cases it has been held that invoice value will not govern unless such value was fairly representative of the actual value.

At the outset I would not like to be quoted as favoring what might be termed a "blanket" application of the destination value on all loss and damage claims. Rather would I rely upon the Supreme Court's language in the McCaull decision, reading:

> But the question is how the contract operates upon this case. In this case it does prevent the recovery of the full actual loss, if it is in force. The rule of the Common Law is not an arbitrary fiat but an embodiment of the plain facts that the actual loss caused by breach of a contract, is the loss of what the contractee would have had if the contract would have been performed.

Thus the court was only concurring in and clarifying the existing law in regard to measure of liability provided for in the Cummins amendment approved March 4, 1915, prohibiting all limitation of liability, and reading in part as follows:

> That any common carrier, railroad, or transportation company subject to the provision of this Act receiving property for transportation from a point in one State or Territory or the District of Columbia to a point in another State, Territory, District of Columbia, or from any point in the United States to a point in an adjacent foreign country shall issue a receipt or bill of lading therefor, and shall be liable to the lawful holder thereof for any loss, damage, or injury to such property caused by it or by any common carrier, railroad, or transportation company to which such property may be delivered or over whose line or lines such property may pass within the United States or within an adjacent foreign country when transported on a through bill of lading and no contract receipt, rule, regulation or other limitation of any character whatsoever, shall exempt such common carrier, railroad, or transportation company from the liability hereby imposed; and any such common carrier railroad, or transportation company so receiving, property for transportation from a point in one State, Territory, or the District of Columbia to a point in another State or Territory, or from a pont in a State or Territory to a point in the District of Columbia, or from any point in the United States to a point in an adjacent foreign country, or for transportation wholly within a Territory shall be liable to the lawful holder of said receipt or bill of lading or to any party entitled to recover thereon, whether such receipt or bill of lading has been issued or not, for the full actual loss, damage or injury to such property caused by it or by any such common carrier, railroad, or transportation company to which such property may be delivered or over whose line or lines such property may pass within the United States or within an adjacent foreign country when transported on a through bill of lading, notwithstanding any limitation of liability or limitation of the amount of recovery or representation or agreement as to value in any such receipt or bill of lading, or in any contract rule, regulation, or in any tariff filed with the Interstate Commerce Commission; and any such limitation, without respect to the manner or form in which it is sought to be made is hereby declared to be unlawful and void.

The Interstate Commerce Commission, in case entitled No. 49, Ex Parte (re the Cummins amendment), concurring in view that limitation of liability as to any particular time or place was unlawful, stated:

> The Cummins amendment clearly places upon the carriers liability for the full actual loss, damage or injury to the property transported which is caused by them, and it makes unlawful any limitation of that liability, or of the amount of receovery thereunder, in any receipt bill of lading, contract, rule, regulation, or tariff filed with this Commission, without respect to the manner or form in which such limitation is sought to be made.

Existing contemporaneously with the Cummins amendment and the Commission decision (Ex Parte 49), we have witnessed the rather amazing paradox of carriers' incorporation in the uniform bill of lading of that iniquitous and unlawful clause providing for point of origin valuation, and their insistence that loss and damage claims be settled on that basis. It mattered not to what degree carrier had been negligent nor in what form the shipper had suffered loss, the carrier had only one remedy and they adhered to this course with a tenacity worthy of a better purpose. In the intricate fabric of modern commerce the shipper could be injured in a thousand different ways by carrier's breach of contract or negligence, and for all of these ills the carrier had only one rigid formula—the constricted, inflexible and unlawful point of origin valuation, which had birth many years prior to development of the present economic industrial and transportation scheme of things. For some reason best known to themselves, I suppose, they did depart in same cases from the point of origin valuation basis, using destination prices on fruit and vegetable claims, but latter basis of adjustment was denied to practically all other shippers.

Obviously, the situation which I have just outlined was in direct contravention to the existing law of the land, and the Commission endeavored to remove this legal inconsistency in case No. 4844; but their efforts were blocked by carriers through legal action. This was the situation up to time of the Supreme Court's decision in the McCaull-Dinsmore case, and in that decision the Supreme Court confirmed very definitely the incorrectness of the carrier's position, upholding the Cummins amendment and reflecting prior views of the Commission. Responsive to this decision the transportation companies have removed from their bill of lading the point of origin valuation clauses by publication of Supplement No. 9 to Consolidated Classification No. 1.

Even aside from the Supreme Court's decision in the McCaull-Dinsmore case, we have only to read the Cummins amendment to see that it provides for full reparation against any and all loss or damage, which shipper might sustain by reason of carrier's breach of contract. Then, the Supreme Court confirms this in that part of the decision quoted above. This portion of the decision states with a clearness not to be misunderstood, that the actual loss caused by breach of a contract is the loss of something which the contractee would have had, if carrier had performed its contract. Surely this is plain language, not susceptible of misinterpretation by anyone.

In the case above referred to involving destination value B. Hart & Bro. would have delivered to their customer, a retailer, silk already contracted for at $2.40 per yard and, on account of carrier's breach of contract, they could not make delivery. Reverting again to the Supreme Court's language, the point of origin clause in bill of lading in this case does prevent recovery of the full actual loss. We submitted certified copies of order placed at San Francisco, showing that about one-half of these goods had been sold "to arrive" at $2.40 per yard, and also submitted certified copies of invoices showing that the case which did arrive was sold for amounts ranging from $2.40 to $2.50 per yard.

Carriers questioned the fact that B. Hart & Bro. were wholesalers and we showed them conclusively that they were wholesalers, supplying the retail trade of San Francisco. In relation to securing supply of goods for their needs, the San Francisco retailers look to B. Hart & Bro. and similar firms as representing the silk market of San Francisco, and the prices exacted by said wholesale firms represent correctly the silk market prices. The retailer sells direct to the consuming public. B. Hart & Bro. do not sell goods direct to the consumer, but supply retailers, who in turn sell to the public. In view of this, I cannot see how any comparisons can be drawn between B. Hart & Bro. and a retail concern.

On account of carriers' failure to make delivery, or, as the law terms it, their "breach of contract," B. Hart & Bro. sustained a loss of 40 cents per yard in addition to the invoice price,

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and it is my opinion that under the Cummins amendment the carrier should be compelled to make them whole.

In the second mentioned case, covering hosiery from Milwaukee, we waived any recovery on basis of the destination value and expressed willingness to accept settlement on value time and place of shipment. In this case the carrier interpreted the measure of liability under the law as invoice price, and calls this settlement "full actual loss suffered."

In taking this position the carrier cannot, correctly, say it represents the invoice "value" time and place of shipment, because, while the invoice was actually dated same date as bill of lading, the prices contained therein were based on contract of sale entered into months prior thereto.

I will not comment at any length on this distorted interpretation of the existing law, because I believe that carriers will later recede from their position in regard to the point of origin value. In other words, if they are not to grant correctness of the destination value, the least that shippers can expect is that carriers will not complicate the situation by interpreting the law and latest decision to mean something which will not even give claimants reparation on the basis which was generally recognized as correct prior to the McCaull decision.

The McCaull decision emphasized what was already set forth in the Cummins amendment and, in confirming incorrectness of point of origin valuation, has created confusion and considerable embarrassment to the carriers. Apparently in their efforts to stem the tide of claims which are in many cases inflated to imaginary destination values, the western carriers, at least, have grasped at the old invoice valuation basis and their attorneys have interpreted that basis as representing full actual loss under the Cummins amendment and the McCaull decision. Between the invoice value and the retail selling price at destination there is some middle ground upon which shippers and carriers must meet.

It occurs to me that the following basis might be used for instances in cases similar to that of B. Hart & Bro., referred to above:

If there had been an appreciation in the market value either at New York or San Francisco (assuming that they would grant that a market existed at San Francisco) between date goods were shipped and date of arrival at destination, the carriers would acknowledge that such increased valuation represented their liability instead of the valuation prevailing on date of shipment. In the B. Hart & Bro.'s case carrier contended that claimant's loss was merely speculative, but B. Hart & Bro. hold a written order at $2.40 per yard and contend (and I believe quite correctly) that nothing could be more definite and specific than the loss of 40 cents per yard which they sustained.

H. F. Gittings, Traffic Manager.

San Francisco, Calif., Dec. 9, 1920.

## THE INDUSTRIAL TRAFFIC MAN

Editor The Traffic World:

I have read with interest your editorial and the various comments thereon, especially the articles by W. K. Webber and W. H. Colson.

I have had practically the same experience as Mr. Colson. I cannot figure out why a railroad man should have preference over a trained man. Of the men that I have known who have taken up a traffic course, practically all were employed as shipping clerks.

It appears to me that preference should be given to the trained man rather than one who knows practically nothing of industrial work.

I have the same opinion as Mr. Colson when he said that when he sees the name of some prominent traffic lawyer representing a complainant he said to himself that the traffic manager of that concern is probably an old railroad man and the firm was compelled to call in an outside traffic man to present and handle their complaint.

And I agree with him when he said that one could learn more in one year from some one of the good extension schools teaching traffic than the usual run of railroad men learn in a lifetime.

Philadelphia, Pa., Dec. 14, 1920. William H. Darr.

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I wish to correct any impression that I was picking on, or criticizing the railroad man, for such was not my intention (see Open Forum, Nov. 13). I was taking the attitude that if there was a lack of trained men, as advertised and published in different reliable traffic publications, why not give the man that is studying traffic work a chance, regardless of whether he is a railroad or extension school man. Would like to know just what is demanded of a man for such a position. As you will notice, by reading the different comments, men with both railroad and extension school training, plus a knowledge of the law, are meeting the same conditions—namely, a failure to get any response from industrial concerns in making application to them for a position. However, while in the discussion, I wonder how many railroad clerks have a knowledge of all the following subjects: Claims, demurrage, reconsignments, switching, routing, interpretation of tariffs, rulings of I. C. C., how to protect a shipper in regard to getting a rate adjustment to meet that of a competitor in a near-by vicinity, or the proper procedure before the I. C. C. to secure the proper adjustment in case of a discrimination, etc., all of which a traffic man must be familiar with to make a success of the work.

I think Mr. Geo. L. Wakeman's article, "A School of Transportation," in the December 4 issue of The Traffic World, a very good idea, for there are men in railroad service anxious to better themselves and willing to work if they are met with response from the men higher up who are able to instruct if they so choose.

I am a railroad man, hold a diploma given by a good extension school, and spent some time in a traffic bureau in one of the larger cities. I also read The Traffic World, which I find a wonderful help in the explanation of current traffic work. While not egotistic enough to consider myself an expert, I do feel that men with such training could be of some assistance in the traffic department of any railroad or industrial concern needing help in that line.

New London, O., Dec. 11, 1920. J. O. Richards.

## MONEY NEEDS OF COMMISSION

*The Traffic World Washington Bureau*

In the estimates submitted to Congress by the Secretary of the Treasury, the Interstate Commerce Commission is listed as needing a total of $5,574,500 for the fiscal year ending June 30, 1922, as compared with $4,693,100, appropriated for the year ending June 30, 1921.

A total of $2,160,000 is asked for salaries of the members of the Commission and all other authorized expenses, principally the salaries of employes. For the year ending June 30, 1921, $1,600,000 was appropriated for that item and in the fiscal year of 1920, $1,233,330 was actually expended.

To enable the Commission to enforce section 20 of the act and other sections it is estimated that $600,000 is needed, the same amount having been appropriated for the fiscal year 1921. In 1920, $284,302.19 was expended under this item.

Enforcement of the safety appliances section of the act will make an appropriation of $350,000 necessary, as against $313,600 in 1921, and an actual expenditure of $310,163 in 1920. For boiler inspection, $325,000 is asked, as against $290,000 in 1921, and $278,453.30 actually expended in 1920. For the valuation work, $2,000,000 is asked, as against $1,750,000 in 1921, and $2,956,736.08 actually expended in 1920.

The inland and coastwise waterways service of the War Department submitted an estimate of $6,924,350, of which $5,000,000 would constitute a revolving fund for development purposes. The Alaskan Engineering Commission estimates it will need $4,000,000 for the construction and operation of the Alaskan Railroad.

## CLAIMS FOR REPARATION

*The Traffic World Washington Bureau*

Informal reparation claims, numbering probably thousands, now on file with the Railroad Administration, will die, by reason of the inability of the Administration to pass on them, unless, prior to March 1, they are filed with the Interstate Commerce Commission. The transportation act gives shippers one year in which to file claims for reparation, after the return of the railroads to their owners. That period of grace will expire March 1.

Cyrus B. Stafford, manager of the claim part of the division of traffic in the division of liquidation claims of the Railroad Administration, who has been a railroad traffic man and a shippers' traffic man, will not allow claims to die through lack of attention on his part. He has prepared a circular letter to claimants calling their attention to two facts—first that the time for filing claims with the Commission will be up on March 1; and, second, that it will be physically impossible for him to pass on the claims before him, each of which has passed through the routine of examination and report by the railroad, which, but for the fact that there was such a thing as federal control, would be responsible to the shipper for loss or damage. This letter he is sending to claimants with a suggestion as to how necessary formalities to keep them alive may be observed with the minimum of difficulty and with a certainty that the claim will be kept alive until positive disposition can be made of it by him.

The suggestion is that if the claimant is willing, and if he will write a letter, addressed to the Interstate Commerce Commission, he, Stafford, will strip his own papers from the file of papers sent in by the shipper and transmit the papers, accompanied by the letter written by the shipper, to the Commission, so that that body can make a record of the matter, and then return the papers to Stafford so that he may continue his investigation and reach a final conclusion as to whether the claim should be paid or rejected.

Registration of the claim with the Commission will stop the statute of limitations running against it and give the claimant two years and one day from the date of definite rejection of the

claim in which to file suit for the money, if he is of the opinion that the rejection was not properly made.

The letter refers, of course, only to such claims as arose during the period of federal control. The law gives the claimant only one year in which to file such claims, which, in effect, are claims against the government. While the rule with regard to carriers is that the two years and one day begin to run after the claim has been rejected, the rule in the cases arising under federal control is that the claim must be filed with the Commission within one year. The fact that the Railroad Administration has the claim is not a filing within the meaning of the statute. The fact that the claimant has sent the claim to the agent appointed by the President to settle such matters as arise out of federal control, does not operate to set aside the part of the law that the filing must be with the Commission, within one year from the conclusion of federal control.

The Stafford letter, dispatch of which was begun December 14, is as follows:

Your attention is directed to Section 206, paragraph C, of the Transportation Act, 1920, which provides that reparation claims "may be filed with the Commission within one year after the termination of federal control, against the agent designated by the president under sub-division (a), etc."

On account of the large number of claims in this office, it has not been possible as yet to take any action on your claim described in the caption, and I fear it will be impossible to give the necessary consideration to your claim before March 1, 1921.

While it is my purpose to dispose of all claims possible prior to March 1, 1921, I feel it proper to bring to your attention the fact that unless this claim is filed prior to that date, it will be barred by the statute.

If you desire me to do so, and will send me a letter (in duplicate), addressed to the Interstate Commerce Commission, stating the amount of your claim, the reasons why you think the rate charged is unreasonable, that you have suffered damage, and that you are transmitting your claim papers for the purpose of filing in accordance with the act, I will attach your claim papers to the letter and transmit to the Commission. These details are required under the rules of the Commission.

If, on the contrary, you desire your papers returned, your request will be complied with, unless, in the meantime, I have had an opportunity to pass definitely on your claim.

## DOINGS OF THE TRAFFIC CLUBS

At the banquet of the Transportation Club of Peoria, December 9, the speakers were Conrad Spens, vice-president of the C. B. & Q., and Frank T. Bentley, traffic manager of the Illinois Steel Company. Mr. Bentley talked of the responsibility of the shipper under the new transportation act. Mr. Spens talked of some of the accomplishments of the railroads since their return to private control.

The Traffic Club of Kansas City, which had been dormant since the government took over the railroads, was reorganized at a meeting December 9. The new officers are Frank M. Cole, of W. P. Tanner, Gross & Co., president; J. D. Yates, A. G. F. A., Mo. Pac. Ry., first vice-president; C. D. Dooley, traffic manager, Peet Bros. Manufacturing Company, second vice-president; Fred B. Blair, traffic manager, Hoyland Milling Company, secretary-treasurer.

The fourth annual banquet of the Houston Traffic Club was held December 14. F. M. Law was toastmaster. F. L. Clements, retiring president, made an address, as did J. F. Hennessey, Jr., the incoming president. Other addresses were made by J. F. Holden, vice-president, K. C. S. Railway; Jack Dione, editor, Gulf Coast Lumberman; George T. Atkins, freight traffic manager, M. K. & T.; and R. C. Fulbright. There were entertainment features interspersed with the speaking, and dancing afterwards.

At the meeting of the Pittsburgh unit of the Traffic Group of the National Retail Dry Goods Association, December 14, W. W. Blakely, A. G. F. A., B. & O., made an address on freight service on less-than-carload merchandise. The subject of package cars between New York and Pittsburgh and between Boston and Pittsburgh, and local conditions of the American Railway Express Company were discussed.

The Waco Traffic Club has elected the following officers: President, C. H. Carringer; first vice-president, B. R. Long; second vice-president, W. N. Miner; secretary-treasurer, Lloyd Bailey.

At a meeting of railroad and industrial traffic men December 13 the Elmira (N. Y.) Traffic Club was organized. The object is to bring about a better understanding between the industrial men and the carriers' representatives. The following officers were elected: John J. DeLaney, president; C. N. Ellis, freight agent, Pennsylvania Railroad, vice-president; Joseph C. Field, secretary. Meetings will be held the second Tuesday of each month beginning with January, 1921, dinner being served at a hotel. The members will devote themselves to a round-table discussion of any matters that are troubling them. A. W. Michelbach, division freight agent of the Erie, and A. W. Stebbings, traffic manager of the Thatcher Manufacturing Company, have been appointed on the membership committee. The club extends a welcome to any member of the N. I. T. L. or other organizations, or any railroad representative who happens to be in Elmira on the evenings that meetings are held.

The Transportation Club of Tulsa, Okla., has elected officers as follows: J. A. Bernier, Kerr Glass Mfg. Company, president; H. J. Conley, Bay State Refining Company, first vice-president; R. V. Miller, Wabash Railroad Company, second vice-president; E. C. Kitching, Santa Fe Railroad, third vice-president; R. C. Hughes, Wabash Railway Company, secretary; J. M. C. Usher, Price Sand Company, treasurer; L. M. Klein, Gulf Pipe Line Company, Gypsy Oil Company, director for three years; A. C. Holmes, Empire Refineries, Inc., director for two years; W. O. Allen, Kerr Glass Mfg. Co., director for one year. At the annual meeting there was an address by J. B. Christensen, of the American Railway Express Company.

The Traffic and Transportation Association of Pittsburgh had its seventh annual banquet the evening of December 3, at the Fort Pitt Hotel. There was an address of welcome by President H. N. Holdren. The toastmaster was Guy J. Wadlinger, general agent, Kansas City Southern, at Pittsburgh. The speakers were U. G. Couffer, freight claim agent, Pennsylvania System; O. S. Lewis, general freight agent, B. & O.; and G. D. Ogden, freight traffic manager, Pennsylvania System.

The Traffic Club of Chicago held its fourteenth annual dinner the evening of December 16 in the ballroom of the Hotel La Salle, with an overflow gathering in the Red Room across the corridor. Many distinguished railroad men and others were guests. There was an elaborate program of entertainment and speeches. President Dalton made a few introductory remarks and introduced the toastmaster, Edward C. Nettles, of Battle Creek, who divided honors with the orators of the evening. The invocation was by Elmer Ward Cole of Huntington, Ind. The speakers were a humorous person, masquerading under the name of ex-Senator E. Burlingame Tutt, of Leesburg, Va.; Colonel Ned Arden Flood, of New York; and Edgar—or, rather, "Eddie"—Guest, of Detroit. The latter was to have been the chief speaker of the evening, but the preceding speaker consumed so much time that Mr. Guest had only a few minutes before leaving to catch a train. The guests who had not heard him before got only a fleeting glimpse of his wonderful talent.

The Lansing Traffic Club has elected the following officers: President, Karl P. Hodges, traffic manager, Duplex Truck Company; vice-president, John Thomson, agent, New York Central Railroad; secretary-treasurer, John T. Ross, traffic commissioner, Lansing Chamber of Commerce. Members of the executive committee are the officers named above and E. L. Jennings, agent, Michigan Central Railroad; Marshall S. Graham, traffic manager, Reo Motor Car Company; W. G. Davis, traffic manager, Auto Body Company; W. K. Andrews, agent, Pere Marquette Railroad, Lansing.

## ADJUSTMENT BOARDS ABOLISHED

*The Traffic World Washington Bureau*

In Circular No. 121, Director-General John Barton Payne abolished Railway Adjustment Boards Nos. 2 and 3, as of January 10, and No. 1 as of February 15. The abolition of the first mentioned boards was ordered as of that day because they have so many cases that there is no estimate as to when they can complete their work. No. 1 estimates that it can finish its work by February 15. The reasons for the abolition are to be found in the circular, as follows:

"A committee representing the Association of Railroad Executives has brought to my attention the fact that General Orders 13, 29 and 53 provide in terms that:

Personal grievances and controversies arising under interpretation of wage agreements and all other disputes arising between officials of a railroad and its employes covered by this understanding will be handled in their usual manner by joint committees of the employes up to and including the chief operating officer of the railroad (or some one officially designated by him). If an agreement is not reached the chairman of the joint committee of employes refers the matter to the chief executive officer of the organization concerned. If the contention of the employes' committee is approved by such executive officer, then the chief operating officer of the railroad and the chief executive officer of the organization concerned shall refer the matter with all supporting papers to the director of the division of labor of the U. S. Railroad Administration who will in turn present the case to the railway board of adjustment, which board would promptly hear and decide the case giving due notice to the chief operating officer of the railroad interested and to the chief executive officer of the organization concerned of the time set for the hearing.

"That after the order of May 29, 1920, and amendment under which the time limit of July 15 was fixed within which claims growing out of the subject matter of said orders should be presented the claimants, without complying with the procedure specified in said General Orders, presented their claims direct to the office of the Director-General, and in view of this fact none of the said claims are now properly before said adjustment boards.

"I have given careful consideration to each contention and

am advised that if said contention is sustained, practically all of the cases now pending before Boards of Adjustment 1, 2 and 3 will fail and must fail of consideration.

"The point made by the representatives of the executives appears to me to be sound and there is nothing contained in the limitation order of May 29, 1920, changing the mode of procedure. But as I look upon the matter the railroads as such are not concerned in the pending claims, if the claims are limited, as in my judgment they must be limited, to the period of Federal control. That is, it is for the Director-General to determine and to pass upon claims against the government by persons who were the employes of the government during the period of Federal control and to provide for the payment of all just claims arising during Federal control just as he must pass upon and provide for the payment of all other claims arising from Federal control.

"If, however, the decision of these claims is to affect the railroads after the end of Federal control, then the railroads have the right to insist upon a strict compliance with the terms of the said General Orders.

"I am further advised that Board No. 1 will be able to dispose of all cases pending before it by February 15, that the number of cases pending before Boards 2 and 3 are so large that many months must elapse before said boards could dispose of them.

"My conclusion, therefore, is that as to cases pending before Boards 2 and 3 some other means must be found to deal justly by the claimants as to any money due them arising out of Federal control.

"The application of all decisions hereafter made to be limited in their effect to money due claimants between January 1, 1918, and March 1, 1920.

"It is, therefore, ordered that Board No. 1 be abolished as of February 15, 1921; that Board No. 2 and Board No. 3 be abolished as of January 10, 1921, i. e., by 30 days' notice as provided in said General Orders.

"Meantime, means will be provided to adequately, justly and promptly dispose of all claims which said boards may leave undisposed of."

## SIDETRACK LEASE JURISDICTION

*The Traffic World Washington Bureau*

That the Commission regards as doubtful its jurisdiction of the complaint in No. 11545, National Industrial Traffic League vs. Aberdeen & Rockfish et al., in which the complainant asks for an order prescribing the terms of the liability clause to be included in leases of railroad property and in side-track agreements, is disclosed by correspondence between Chairman Clark, of the Commission, and John E. Benton, general solicitor of the National Association of Railway and Utilities Commissioners. The Commission has requested that briefs be filed as to the question of jurisdiction.

Copies of a letter from Mr. Benton to Mr. Clark and the latter's reply have been sent to the state commissions by Mr. Benton. The letter to Chairman Clark from Mr. Benton follows:

"There is now pending before the Interstate Commerce Commission a proceeding brought by the National Industrial Traffic League against the Aberdeen & Rockfish Railroad Company and other carriers of the country, being Docket No. 11545, in which the request is made that the Interstate Commerce Commission enter an order prescribing the terms of the liability clause to be included in leases of railroad property and in side-track agreements and other similar agreements.

"In this connection I call your attention to the provisions of paragraph (17) of Section 1 of the Interstate Commerce Act as amended, which provide that nothing in the Act shall impair or affect the right of a state in the exercise of its police power to require just and reasonable service for intrastate business, 'except in so far as such requirement is inconsistent with any lawful order of the Commission made under the provisions of this Act.'

"If the Commission has power to make, and does make, an order against carriers generally, prescribing the terms of side-track agreements, the effect of it may be to prevent state authorities from making orders controlling the terms upon which side-tracks shall be installed and service provided. These are local matters, concerning which, if the federal commission has power, it is a serious question whether it will desire to act in such a way as to interfere with the jurisdiction of the state authorities.

"The fact that jurisdiction over the construction and abandonment of industrial tracks is expressly withheld from the federal commission by paragraph (22) of said Section 1, would seem to indicate a disposition on the part of Congress not to diminish the powers of the state authorities with respect thereto.

"I direct your attention to these provisions because I believe you will consider that the case is one where no order should in any event be made without first giving notice to the state commissions, and affording them opportunity to be heard upon the question of jurisdiction, and also as to the terms of the order to be made, if the federal commission shall determine to make an order.

"On behalf of the National Association of Railway and Utilities Commissioners I make that request."

Chairman Clark's reply follows:

"I have your letter of the 3d instant with reference to matters brought in issue in No. 11545, National Industrial Traffic League vs. Aberdeen & Rockfish Railroad Company et al.

"For your information will say that the complainant has brought to us with request that we give our approval thereto certain proposed paragraphs for a contract governing the construction and operation of industrial side-tracks, which would fix the liabilities of the parties in cases of injury to property. Mr. Clifford Thorne, appearing for certain oil interests, intervened in this case. It was set for hearing but postponed on request of parties. Mr. Thorne objects to our giving approval to the paragraphs in question and to our dismissing the complaint as was proposed by the complainants in case we did approve the submitted paragraphs.

"Our jurisdiction of the complaint is doubtful. We are, as at present advised, of opinion that we have no jurisdiction of the terms of a contract fixing the liabilities of the parties in case of injury to property. We have just instructed our Chief Examiner to advise the parties to this proceeding, including the intervener, that we desire them to file within a reasonably short time, which the Chief Examiner will fix, briefs on the question of jurisdiction. If you desire to file a brief on that question amicus curiae, it will be welcome. In the meantime I will acquaint my colleagues with the suggestions and request that you make."

## ANSWER TO REED RESOLUTION

*The Traffic World Washington Bureau*

The Commission, December 10, sent to the Senate its answer to the resolution of Senator Reed, of Missouri, adopted May 14, asking as to what had caused the then existing freight congestion and what efforts had been or should be taken to relieve it. The answer is about as short as any executive or administrative part of the government ever sent to the Capitol in answer to a resolution of inquiry. It is as follows:

"By Senate Resolution No. 362 the Interstate Commerce Commission was directed to 'furnish at the earliest possible date information to the Senate showing the causes for the present freight congestion in the principal cities of the United States and what efforts have been taken or are being taken or should be taken to relieve the present congested condition and to promptly move the freight tendered to the railroads.'

"The resolution was adopted May 14, 1920. On the following day the principal rail carriers of the United States filed with us an informal petition in which they recited the existing conditions as to congestion upon their lines, and asked us to exercise the emergency powers granted by the transportation act, 1920.

"In our thirty-fourth annual report to the Senate and House of Representatives, this day transmitted to each house, beginning at page 11 and continuing to page 25, will be found a discussion of the causes of the freight congestion in the principal cities of the United States, and a statement of the efforts made to relieve such condition and to move promptly freight tendered to the railroads. On pages 56 and 57, under the heading, 'Bureau of Service,' we reported the steps taken to provide the administrative machinery to deal with car service matters. On pages 30 to 33, inclusive, we reported as to the administration of the revolving fund created by section 210, transportation act, 1920, as amended by act approved June 5, 1920, and there set out a list of the loans made by the United States to carriers to aid in the acquisition of locomotives and cars and in the making of other additions and betterments.

"It is believed that the Commission's annual report, and particularly the portions above cited, gives the information called for by the resolution. We add that since our thirty-fourth annual report was prepared the progressive amelioration of the emergency conditions which had previously existed warranted the suspension of Service Orders No. 20 and No. 21, effective November 9 and November 24, respectively; and the discontinuance of the remaining terminal committees described in the report."

## INLAND WATERWAY DEVELOPMENT

(Continued from page 1156)

and operate boat lines. With the Interstate Commerce Commission in charge of the situation and acting in the interest always of good transportation, there could be no dispute as to who should or should not own the boat lines. The Commission would take up each case on its merits and could, of course, be trusted to do the best possible thing for the shippers interested without injustice to capital invested or seeking investment.

## RAILWAY REVENUE

*The Traffic World Washington Bureau*

A partial summary of operating revenues, expenses and income, compiled from reports of large steam roads, covering October of this year and the ten months ended with October, promulgated by the Commission December 13, shows an operating revenue for the month, for the country as a whole, of $617,619,989, compared with a revenue of $489,306,436, for October last year. Expenses rose from $390,602,565 to $506,846,380, and the net railway operating income increased from $72,023,135 to $82,947,374. The operating ratio increased from 79.8 to 82.1.

In the eastern district, the revenue increased from $219,596,464, to $289,238,102; expenses from $184,649,313, to $245,732,950, and the net railway operating income from $23,386,218 to $29,692,250. The operating ratio increased from 84.1 to 85.

In the Pocahontas district the revenue increased from $16,564,636 to $22,406,620; expenses from $13,689,281 to $17,124,265, and the net railway operating income from $2,434,281 to $4,989,504. The operating ratio decreased from 82.6 to 76.4.

In the southern district the operating revenue increased from $59,737,090 to $70,952,295; expenses from $50,762,739 to $62,646,746, and the net railway operating income fell from $6,714,062 to $6,019,917, and the operating ratio rose from 85 to 88.3.

In the western district the operating revenue rose from $193,408,246 to $235,022,972; expenses from $141,501,232 to $181,342,419. The net railway operating income rose from $39,488,574 to $42,245,703, and the operating ratio went up from 73.2 to 77.2.

For the ten months ended with October, the figures are as follows:

In the eastern district the operating revenue increased from $1,899,373,051 to $2,222,235,426; expenses from $1,654,572,783 to $2,227,191,466, and the net railway operating income tumbled from $160,805,150 to a deficit of $120,927,167. The operating ratio increased from 87.1 to 100.2.

In the Pocahontas district the operating revenue increased from $144,349,844 to $167,935,114; expenses from $114,260,130 to $150,522,638, and the net railway operating income declined from $24,298,567 to $16,148,457. The operating ratio rose from 79.2 to 89.6.

In the southern district the operating revenue increased from $520,090,421 to $633,069,660; expenses from $458,952,893 to $594,519,277. The net railway operating income declined from $39,908,693 to $13,479,990. The operating ratio increased from 88.2 to 93.9.

In the western district the operating revenue increased from $1,567,458,112 to $1,865,501,001; expenses from $1,261,102,751 to $1,661,725,981; the net railway operating income declining from $227,383,496 to $85,040,110. The operating ratio increased from 80.5 to 89.1.

For the country as a whole, the operating revenue rose from $4,131,271,428 to $4,888,741,201; expenses from $3,488,888,557 to $4,633,959,362; the net railway operating income falling from $452,395,905 to a deficit of $6,258,610. The operating ratio went up from 84.5 to 94.8.

## SAFETY APPLIANCE ACT

*The Traffic World Washington Bureau*

Application of the safety appliance act is not limited to operations on main lines, and a "moving locomotive with cars attached is without the provisions of the act only when it is not a train; as where the operation is that of switching, classifying and assembling cars within railroad yards for the purpose of making up trains. Congress has not imposed upon the courts applying the act any duty to weigh the dangers incident to particular operations; and we have no occasion to consider the special dangers incident to operating trains under the conditions here presented."

That is the gist of the decision of the United States Supreme Court in United States vs. Northern Pacific, on a writ of certiorari from the circuit court of appeals from the Eighth circuit, written by Associate Justice Brandeis. The lower court held that the operations on a part of the track of the Northern Pacific along the waterfront in Duluth between Rice's Point and Furnace, a distance of four miles, were not subject to the safety appliance act, and, therefore, the company could not be punished for failing to have a sufficient percentage of cars equipped with air brakes, because the tracks were not used for operating passenger or freight trains, through or local, but only by the yardmaster in switching trains in the terminal.

The court held as material to the consideration of the case the fact that that track crosses one street railway track and the lines of three independent steam roads, and that two of the roads use about a mile of the track in question as parts of their freight lines in getting traffic to and from piers between Rice's Point and Furnace. The Northern Pacific uses the track in transferring freight from one classification yard to another. The court said that if use of a track as part of a main line were essential to bring the operations within the limits of the safety appliance act, the fact that it is used by two steam roads as part of their freight track would be sufficient to satisfy that requirement.

## CONFERENCE RULING

The Commission, in an announcement December 10, said that in conference December 6 it adoptel the following conference ruling:

Safety Appliances—Cars of Special Construction.—Cars of special construction, as contemplated by the Commission's order of March 13, 1911, are cars which cannot be equipped with safety appliances as prescribed in the order for any of the specified classes enumerated therein.

In the construction of new equipment which does not conform to the specified classes designated in the order, plans shall be submitted to the Commission prior to construction of such cars for the purpose of determining the location and application thereto of all safety appliances required by statute and order of the Commission of March 13, 1911.

## TO ENFORCE CAR SERVICE RULES

*The Traffic World Washington Bureau*

Daniel Willard, chairman of the advisory committee of the Association of Railway Executives, has sent the following message to the presidents of Class I roads:

"In view of the present car situation and cancellation of all outstanding orders from Car Service Divisions for movement empty cars, there is no reason why car service rules should not now be adhered to. Have been requested to urge all carriers to take necessary steps at once to bring about full compliance by their companies with car service rules which have been accepted and signed by possibly every railroad company in the United States. It is believed that if present rules are complied with by all companies relocation of cars in accordance with ownership will proceed in much fairer and more orderly manner."

### SERVICE AGAINST EXPRESS COMPANIES

The National Industrial Traffic League has received a letter from Mason Manghum, commerce counsel for the Commonwealth of Virginia State Corporation Commission, stating that Judge Carter Scott of Richmond has decided that the service on Mr. Hockaday was good and legal service against the Adams and Southern companies, and the court has ordered the Adams and Southern companies to return to Richmond the claim papers and dockets which these companies removed to New York to Mr. Stockton's office.

### CERTIFICATES IN PAYMENT FOR PROPERTY

The Tennessee & North Carolina Railway Company, in a petition filed with the Commission, asks authority to issue certificates representing 2,500 shares (par value $100) of its capital stock in payment for the railroad property which was formerly controlled by the Tennessee & North Carolina Railroad Company.

### AMENDMENT TO SPECIAL PERMISSION 51215

In an amendment to special permission No. 51215, pertaining to minimum weights on grain and grain products, the Commission on December 10 ordered: that a paragraph appear as the third paragraph of Note 4 on sheet 2 relating to grain, as follows: "Cars in general service of capacity greater than 60,000 lbs. as covered by the preceding paragraph shall be considered to be cars of 70,000, 80,000 and 100,000 lbs. capacity respectively."

### L. S. & I. STOCK DIVIDEND

The Lake Superior & Ishpeming Railway Company has filed a petition with the Commission asking for authority to issue $2,000,000 par value of common stock, to be distributed as a stock dividend to its stockholders. On September 30, 1920, the applicant states, it had an accumulated and reinvested earned surplus of $2,690,407.45 and, if the application is approved, $2,000,000 of the surplus will be capitalized, as represented by the proposed stock dividend.

### C. & O. LOAN

The Commission has approved a loan of $3,759,000 to the Chesapeake & Ohio Railway Company to apply to the purchase of freight train equipment, consisting of 25 freight and switching locomotives and 1,000 (100-ton) steel coal cars at an estimated total cost of about $8,200,000. The carrier is itself required to finance about $4,360,000 to meet the loan of the government.

### SILICA SAND ORDER VACATED

The Commission has vacated that part of its order in No. 10927, Silica Sand Producers' Traffic Association of Illinois vs. C. B. & Q., Director General, et al., pertaining to the relationship of rates from the Ottawa district to points east of the Indiana-Illinois state line, to those from Gray's Summit, Silica and Pacific, Mo., to the same destinations.

# Docket of the Commission

**Note. Items in the Docket marked with an asterisk (*) are new, having been added since the last issue of The Traffic World. Cancellations and postponements announced too late to show the change in this Docket will be noted elsewhere.**

**December 20**—Argument at Washington, D. C.:
11415—St. Louis & O'Fallon Ry. Co. vs. East St. Louis & Suburban et al.
11253—Pittsburgh Terminal R. R. & Coal Co. vs. Pa. et al.

**December 20**—Washington, D. C.—Examiner Money:
11662—Charleston, S. C., Mining and Manufacturing Co. vs. Director General.

**December 20**—Louisville, Ky.—Examiner Kephart:
11885—West Kentucky Coal Bureau vs. Ill. Cent. et al.

**December 21**—Argument at Washington, D. C.:
11265—Sun Company vs. Delaware River & Union et al.
11146—Automatic Sprinkler Co. of America et al. vs. Alabama & Vicksburg et al.
11229—Louis Werner Stave Co. vs. Director General and Louisiana Ry. and Nav. Co.
11159—Choate Oil Corporation vs. C. R. I & P. et al.
11159 (Sub. No. 1)—Home Petroleum Co. vs. A. T. & S. F. et al.

**December 21**—Washington, D. C.—Examiner Money:
11826—The Fullerton Powell Hardwood Lumber Co. vs. Virginia-Carolina Ry. et al.

**December 22**—Argument at Washington, D. C.:
11514—Davis Mfg. Co., Inc., vs. L. & N. et al. Portions of fourth section applications 1548 and 1952.
11252—Virginia-Carolina Chemical Co. vs. Director General.

**December 22**—Washington, D. C.—Examiner Money:
11844—Ingram-Day Lumber Co. vs. L. & N. et al.

**December 23**—Argument at Washington, D. C.:
11487—Buckeye Veneer Co. vs. Director General.
11355—Central Pennsylvania Lumber Co. vs. Director General and Pennsylvania.
11432—George A. Fuller Co. et al. vs. A. C. L. et al.
11394—A. B. Alpirn vs. C. B. & Q. and Director General.

**December 23**—Washington, D. C.—Examiner Money:
11718—The Standard Red Cedar Chest Co. et al. vs. Alabama Great Southern et al. Such fourth section departures as may exist in the adjustment of rates will be considered by the Commission in the disposal of this complaint.

**December 27**—Argument at Washington, D. C.:
11283—Miami Copper Co. vs. Arizona Eastern et al.
11479—Consolidated Gas, Electric Light and Power Co. of Baltimore vs. Canadian Pacific et al.
11403—Nestle's Food Co., Inc., vs. Mobile & Ohio et al.

**December 28**—Argument at Washington, D. C.:
11275—Carnegie Steel Co. vs. Pittsburgh & Ohio Valley et al.

**January 3**—Richmond, Va.—Examiner Hillyer:
* 11976—Bedford Pulp and Paper Co. vs. Chesapeake & Ohio and Director General.

**January 3**—Los Angeles, Calif.—Examiner Hartman:
* Valuation Docket 26—In re San Pedro, Los Angeles & Salt Lake R. R. Co. (The purpose of this hearing is to complete the testimony respecting the present value of land contained in Valuation Section 1 and the scope of the hearing will be confined to that issue.)

**January 3**—Louisville, Ky.—Examiner McQuillan:
* 11936—Coral Ridge Clay Products Co. vs. Director General.

**January 3**—Chicago, Ill.—Commissioner Ford:
* I and S. 1250 and first sup. order—Diversion and reconsignment rules, regulations and charges.

**January 3**—Philadelphia, Pa.—Examiner Gaddess:
* 11918—E. I. DuPont de Nemours & Co. vs. Pa. et al.
* 11918 (Sub. No. 1)—E. I. DuPont de Nemours & Co. vs. Director General.
* 11920—E. I. Du Pont de Nemours & Co. vs. Director General.
* 11953—E. I. Du Pont de Nemours & Co. vs. Director General and Raritan River.

**January 4**—St. Louis, Mo.—Examiner Fleming:
* I. and S. 1252—Sulphur and brimstone from Louisiana and Texas pts.

**January 4**—Charlotte, N. C.—Examiner Hillyer:
* 11926—Cannon Mfg. Co., Kannapolis, N. C., vs. Director General and Southern.

**January 4**—Buffalo, N. Y.—Examiner Pattison:
* I. and S. 1248 and first supplemental order—Allowances to plant facility railroads at Buffalo.

**January 5**—Spokane, Wash.—Examiner Keeler:
* 11840—Inland Empire Paper Co. vs. Spokane International and Director General.
* 11840 (Sub. 1)—Inland Empire Paper Co. vs. C. M. & St. P. et al.
* 11840 (Sub. 2)—Inland Empire Paper Co. vs. Oregon-Washington R. R. and Nav. Co. et al.
* 11840 (Sub. 3)—Inland Empire Paper Co. vs. C. M. & St. P. et al.

**January 5**—Washington, D. C.—Examiner Butler:
I. and S. 1240 and first sup. order—Water competitive rates on lumber.

**January 5**—Argument at Washington, D. C.:
10745—National Wholesale Grocers' Assn. of the U. S. vs. Alabama & Vicksburg et al.
10745 (Sub. No. 1)—Southern Wholesale Grocers' Assn. et al. vs. Sou. et al.

**January 5**—St. Louis, Mo.—Examiner Fleming:
* 11804—Tuffli Bros. Pig Iron and Coke Co. vs. Director General.
* 11946—Tuffli Bros. Pig Iron and Coke Co. vs. Director General.

**January 5**—Pittsburgh, Pa.—Examiner Seal:
* 11977—Mexican Gulf Oil Co. (Pittsburgh, Pa.) vs. Midland Valley et al.
* 10197—Avella Coal Co. vs. Pittsburgh & West Virginia and Director General.
* 10197 (Sub. No. 1)—Meadow Lands Coal Co. vs. Pittsburgh & West Virigina and Director General.
* 10197 (Sub. No. 2)—Waverly Coal and Coke Co. vs. Pittsburgh & West Virginia and Director General.
* 10197 (Sub. No. 3)—Pryor Coal Co. vs. Pittsburgh & West Virginia and Director General.
* 10197 (Sub. No. 4)—Duquesne Coal and Coke Company vs. Pittsburgh & West Virginia and Director General.
* 10197 (Sub. No. 5)—Pittsburgh Southwestern Coal Co. and David L. Newill, receiver thereof, vs. Pittsburgh & West Virginia and Director General.
* 10197 (Sub. No. 6)—Ferguson Coal and Coke Co. vs. Pittsburgh & West Virginia and Director General.

**January 5**—Nashville, Tenn.—Examiner McQuillan:
* 9190—Murfreesboro Board of Trade, Murfreesboro, Tenn., et al. vs. Louisville & Nashville et al.
* Fourth Section Order 7566—Class and commodity rates to Nashville, Tenn.

**January 5**—New York, N. Y.—Examiner Gaddess:
* 11958—Valentine Scheidell and Henrietta M. Scheidell, co-partners, doing business as the Sullivan Count Creamery Co., vs. Director General.
* 11922—J. B. Schank, J. I. Hutchinson, Sr., and H. R. Field, trading as Schanck, Hutchinson & Field, vs. Pa. et al.

**January 6**—Argument at Washington, D. C.:
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10816—Three Lakes Lumber Co. et al. vs. Washington Western et al.
8167—Three Lakes Lumber Co. et al. vs. Washington Western et al.
I. and S. 193—Joint rates with the Washington Western Ry. Co.

**January 6**—St. Louis, Mo.—Examiner Fleming:
* 11631—Merchants' Exchange of St. Louis, Mo., vs. B. & O. et al.
* 11636—St. Louis-San Francisco Ry. Co. vs. Nor. Ala. et al.

**January 6**—New York, N. Y.—Examiner Gaddess:
* 11979—United Paperboard Co., Inc., vs. Canadian National Rys. et al.

**January 6**—New York, N. Y.—Examiner Gaddess:
* 11970—M. Argueso & Co., Inc., vs. Galveston, Harrisburg & San Antonio et al.

## CHANGES IN DOCKET

Hearing in 11391, the Whitacre-Greer Fireproofing Company vs. Pennsylvania et al., assigned for December 15 at Canton, O., was canceled.

Hearing in I. and S. 1218, live stock loading and unloading charges (2), assigned for December 16 at Chicago, was postponed to a date to be hereafter fixed.

## DULUTH & IRON RANGE PETITION

The Duluth & Iron Range Railroad Company has filed a petition with the Commission asking for a certificate authorizing the operation by it of 2.91 miles of railroad in St. Louis County, Minnesota, between Divide and Babbitt. The line will serve principally the Mesaba Iron Company at Babbitt.

## MICH. UNITED RYS. CO. PETITION

The Michigan United Railways Company of Jackson, Mich., has filed an application with the Commission asking for a certificate authorizing it to operate its electric railway system in Jackson, Calhoun, Kalamazoo, Ingham, Eaton, Clinton and Shiawassie counties. The property has been operated by the Michigan Railway Company under lease.

## NO REHEARING IN INDIANAPOLIS CASE

Application for further hearing has been denied by the Commission in No. 9326, Indianapolis Chamber of Commerce et al. vs. C. C. C. & St. L. et al. The petition for rehearing was filed by the National Live Stock Shippers' League.

## WESTERN MARYLAND NOTE ISSUE

The Western Maryland Railway Company has petitioned the Commission for authority to issue $225,000 of 6 per cent marine equipment gold notes to defray the cost of a car float for the handling of coal from Port Covington at Baltimore to the Bethlehem Steel Company and other industries located along the Baltimore harbor.

## EMBARGO CIRCULAR

In Supplement No. 1 to Circular CSD-87, the Car Service Division of the American Railway Association, notified all railroads as follows:

> Effective at once, Section II of Circular CSD-87, October 5, 1920, is modified to permit the placement of embargoes where necessary to restrict loading during winter months of bulk material in open cars and perishable freight in common box or stock cars.
>
> Arrangements should be made between the interested lines to protect the through movement of cars loaded prior to date of this supplement.

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# The Traffic World

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## ANOTHER SIX MONTHS

Another semi-annual volume of The Traffic World is completed with this number and another six months of transportation history has been written. Six months ago we said that there never had been a time in the last few years when the perspective at the close of one six months' period and the beginning of another had not offered a view different in many important respects from the last preceding one. That remains true. At the beginning of the half year just closing, the railroads had been returned to private control and the present transportation act had been written on the statute books, but the Interstate Commerce Commission had not yet decided the 1920 advanced rate case placing rates on the level prescribed by the new law, nor had the United States Railroad Labor Board adjusted railroad wages. But both these things have come about since the first of last July. The Labor Board has acted and the carriers are paying the greatly increased wages which form a part of the reason for the high freight charges. The Commission has increased rates as instructed by Congress, though even yet, due to opposition by some of the states on the theory that their rights are being invaded, there is some doubt as to whether the intrastate increases provided will go into effect in all states.

We said six months ago that the railroads were on trial and so was the new law. The railroads, thus far, have, as we view it, met the test as well as could have been expected. They seem to be accepting the law in good spirit with the desire to make it work, notwithstanding the many objections they had to it as written. There may be much that they can still do but, at least, their attitude offers small opportunity for criticism. But what of the law itself? It is still on trial. Many profess to think it has failed. Many others believe it has not yet solved the problem of transportation regulation—the problem of enabling the railroads to obtain the revenue with which to do business properly and at the same time pay a suitable return on investment.

That transportation problem certainly looms severely. The rates provided by the Interstate Commerce Commission are not providing the revenue necessary to enable the carriers to earn six per cent on their valuation. What is to be done? One of the reasons for the shortage of revenue is the falling off in business. There is not enough freight to be hauled. One of the reasons given for the falling off in business is that rates are so high as to restrain freight from moving. We think that argument may apply only in exceptional cases and locally, but certainly the high rates have that tendency. Shall, then, the Commission further increase rates to a point where the carriers will earn what the law says they shall have? If it does, will there not be a still further falling off in business on account of the advance, and the purpose of the advance thus be defeated? And even aside from the effect on the volume of business, would the public stand for another material increase in rates?

Those are some of the questions that are confronting us and that must be settled. If they are not settled, and settled with wisdom, the propaganda for government ownership or operation will be resumed, and we fear that success might come with the resumption. The public will not much longer be plagued with this problem without insisting on something radical. We are not suggesting any particular course except that men who are fitted to consider the question, whether their business depends on it or not, give their minds to it. It is important and pressing—more so than may now appear to the casual observer.

It may be, of course, that the situation can be saved with earnings for the railways something short of the percentage that Congress found to be necessary. Perhaps if six per cent on their valuation cannot be earned, five per cent or even four per cent will be made to suffice. Doubtless, too, the railroads can do something in increased efficiency. In this they should ask and would obtain the co-operation of the shipper, whose interest is identical with that of the carrier. Perhaps pay rolls may be cut to the point where an appreciable amount of money can be saved. Operating expenses are high. Fuel and labor are two items in which the increase has been enormous. Fuel will doubtless come down, but how about labor? Wage scales have been adjusted by the Labor Board. The railroads cannot

change them, if they would, without formal action by that Board. But we believe they must be cut. Other schedules of pay are coming down and there is no reason why the railroads should be forced to pay more than the average in other lines of employment.

If, with these economies, the railroads are enabled to earn the amount necessary, the situation will be saved. But suppose they do not effect the economies or, if they do, that they are still not able to earn what they must earn? The answer many will have for that question, if it arises, is "government ownership." We must be ready to combat that answer. To rail against the principle of government ownership will not meet it. There must be something constructive to offer—something that will meet the approval of economists and Congress. It is time we were thinking.

## FARMERS AND TRANSPORTATION

In the economic readjustment of our country after the war and in the permanent policies to be followed in our domestic administration, what part are the farmers of the country going to play? It will be well to keep an eye on the American Farm Bureau Federation, which held its convention in Indianapolis this month. This organization, we are informed, has one million members at the present time and is growing rapidly. Its dues are ten dollars a year—small enough to permit anyone to join and yet large enough, if enough join, to make a respectable fund to be used for any purpose that seems good to the farmers. Ten million dollars, judiciously expended, can accomplish much. And the farmers that belong to this organization are not all of the "B'Gosh" type, with chin whiskers, pants in boots, and straw in mouth. In fact, the farmer is not like that now anyhow, except on the stage. Farmers are business men with scientific knowledge of their business. Many of them do not do the actual farming themselves. They farm from their offices or their clubs in the city. But they know their business and they are vitally interested in economic questions from the point of view of the man who has his money invested in farm lands and stock.

The farmers at their Indianapolis convention adopted voluminous resolutions covering many phases of economics. Transportation was not overlooked. It would be expected to play a prominent part in their deliberations for the reason, if for no other, that Clifford Thorne is the attorney for the federation and is prominent in its councils. He was a leading spirit in the convention, where he made a speech about transportation in which he took the hide off the new transportation act and the Interstate Commerce Commission—the latter for placing the valuation of the railroads at five billion dollars more than he thought it should be. The resolutions adopted with respect to transportation reflect the views of Mr. Thorne, as we understand them.

How much in earnest this federation of farmers is on this subject and what action they propose to take other than the adoption of resolutions, we do not know. Resolutions in themselves are harmless and are the favorite indoor sport of most organizations. It is so easy to express one's opinions about things—and then do nothing more. But if the farmers intend to press for legislative action that will give effect to their ideas, they are an element to be reckoned with, we should say.

Some things in the resolutions, we think, are good and some are bad. As to labor, they seem sound. Perhaps the farmers will help, or at least not oppose, the Poindexter anti-strike bill. The policy advocated by the resolutions would prevent the Interstate Commerce Commission from exercising jurisdiction—under its present authority in the transportation act—over intrastate rates. The transportation act would, in other respects also, be shot to pieces, though no substitute is offered for the "cost-plus plan," as it is characterized by the farmers. They favor the construction of a canal from the Great Lakes to the sea.

That our readers may have before them the ideas of the farmers and the program which possibly they may attempt to carry out into law, we print the transportation sections of the resolutions adopted in full. They are as follows:

We reiterate our sympathy is with the laboring man and we will do everything in our power to aid him to secure just wages and fair working conditions for efficient services rendered. We are, however, concerned in assuring orderly and lawful protection to every citizen, and we are unalterably opposed to organized strikes and sympathetic lockouts which interfere with the orderly conduct of business.

We respectfully request the Interstate Commerce Commission to recognize the need for preferential rates on agricultural limestone, rock phosphates and fertilizers for soil-building purposes.

We demand of Congress the adoption of such amendments to the Interstate Commerce Act as amended by the Esch-Cummins bill as shall preserve the powers of the several states to regulate the rates and practices of carriers relating to local transportation and distribution of cars, and as shall confine complaints before the Interstate Commerce Commission against such rates, regulations and practices upon the ground of alleged discrimination to persons and localities injuriously affected thereby.

We denounce as un-American the principle and are opposed to guaranteeing a fixed return to public utilities and railroads on a cost-plus plan. We insist that in fixing the value of property of transportation systems, the commercial value of such property should be at least some indication of its real value and we protest the action of the Interstate Commerce Commission in fixing the value of such properties at five billion dollars in excess of their commercial value as an unjust imposition on the American people.

We favor the construction of a Great Lakes-to-the-sea deep waterway route.

## ILLINOIS COMMUTATION RATE CASE

Examiner Disque opened the hearing on commutation and multiple form ticket rates in the state of Illinois (11703) in Chicago December 18. Attorneys Fletcher and McLaughlin represented the carriers, petitioning for a raise in rate of 20 per cent in these fares. At the two December 18 sessions a number of witnesses were questioned in an attempt to show that the roads had been losing a considerable sum on this class of traffic in the last few years. An exhibit was entered purporting to show that the carriers lost, in 1919, an average of .694 cent per train-mile on all suburban traffic carried. Mr. Balch, appearing for the Chicago & Northwestern Railroad, stated that a schedule of costs, filed as an exhibit, showed a gross expenditure of $3,097,758.06 for commutation traffic alone in 1919, an amount which he estimated would be increased by 15 per cent in the current year, and would result in a net loss to the C. & N. W. of not less than $811,824.59.

Assistant Attorney-General Culver of Illinois and H. V. Slater, rate expert for the Illinois commission, indicated that they would attempt to show that these figures were inaccurate by comparing them with figures for the cost of maintaining the entire freight service in the Chicago freight district for the same period of time. The examiner allowed them until Monday to prepare figures, and to prepare a rebuttal on the various exhibits introduced by Mr. Thompson, also of the C. & N. W.,

showing the present and proposed commutation rates on most of the roads in the Chicago suburban district.

It was pointed out by the carriers that interstate rates were often defeated by passengers by purchasing a ticket to some state-line point and purchasing another from that point to their destination. Mr. Culver, however, showed that the acceptance of such tickets was in direct violation of the conditions printed on the reverse side of the C. & N. W. commutation tickets. He further drew from Mr. Eustis, of the C. B. & Q., an admission that a good portion of their commutation tickets to and from Aurora were knowingly in the hands of scalpers.

The carriers contended that the equipment on these suburban lines was necessarily idle a greater part of the day than on the through trains, both interstate and intrastate; also that the crews on the suburban trains have to be paid on the average of 11 hours and 52 minutes for 6 hours 26 minutes' work, whereas the ratio of pay hours and work hours for crews on through trains is considerably lower.

The other side failed to shake the contention of the carriers that the equipment and the crews on these suburban trains were of practically the same quality as on through trains. The fact was brought out that commmutation trains, as a rule, must carry a larger crew. An attempt was also made to show that a discrepancy had existed in the rate per mile basis of commutation tickets for interstate and intrastate travel, even before the raise was granted in Ex Parte 74. Comparison between the rates on the C. & N. W. and the Chicago, North Shore Electric Line were made by the carriers to show that the rates on the steam line were substantially lower. The other side, however, indicated that it would attack this contention at the proper time.

The second day most of the morning was given over to a discussion of the number of free-fare tickets issued for use on suburban trains. Mr. Culver endeavored to get the admission from the carriers that over 10 per cent of the traffic carried on these lines were emplbyes of the roads, their families, and others holding "dead-head" tickets. To this the carriers replied with an admission that careful checks on typical trains showed this class of traffic to be something less than 4 per cent. Mr. Slater refused to accept this count and stated that if, in fact, the "dead-head" traffic did amount to 10 per cent, the cost of carrying it would practically account for the deficit claimed by the carriers on commutation traffic. The two sides having apparently gotten into a dead-lock on the question, it was dropped at the suggestion of the Examiner.

Recalling Mr. Thompson, of the C. & N. W., for cross-examination, the state failed to refute any of the figures in the exhibits previously entered by him. A. L. Vilas was also recalled. His reappearance resulted in the strengthening of the carriers' case by introducing evidence which purported to show that the previous estimates of the operating costs of the suburban lines were conservative.

The state introduced only one witness, A. Hueneryager, manager of the Zion Institutions and Industries, Zion City, Ill. Mr. Hueneryager testified that the equipment on the C. & N. W. in suburban service is old and that the service rendered to Zion City is inadequate to handle the traffic between that point and Chicago. He stated that the rate per mile to Zion City is unjust since it is considerably higher than rates to points requiring a shorter haul. He said exhibit C 19 was faulty in that it did not show that single ride tickets on the C. & N. W. were higher than corresponding rates on the Chicago North Shore Electric Line, and also because it did not show that rates for 10 and 25-ride tickets on the C. & N. W. would be higher than those on the C. N. S. if the 20 per cent raise demanded by the carriers were granted. On cross-examination the carriers succeeded in getting the witness to admit that the lowest possible rate on the C. & N. W. at present is only about one-third as high as the lowest possible rate on the electric line.

Mr. Slater requested a continuance to allow the Illinois commission time to analyze the cost figures submitted and to prepare figures on a different basis, if possible. He also requested detailed information as to the revenue on the 72 suburban stations on the Illinois Central in order to find out if some of the agents at these stations could not be dispensed with. With the consent of the carriers, date for further hearing was set at 10 a. m., in Washington, January 13. In view of this concession to the state, brief time was shortened from 30 to 20 days.

## TRAFFIC AND RATE STATISTICS

The Bureau of Railway Economics has prepared statistics relating to traffic and rates on the principal systems of railways of the world from the latest available data, some of which, however, are so old as to be of little value. For instance, the figures pertaining to railways in Austria, Belgium, Brazil, Bulgaria, France and Russia cover periods prior to the world war. Those for Austria, Belgium and France cover 1912 and 1913; those for Germany cover 1916 and 1917; Bulgaria, 1913 and 1914; Siam, 1915 and 1916, and Russia, 1911. The figures for all the other countries are as recent as 1918, with the exception of South Australia, figures for which are shown for 1919. The figures for the United States for as late as 1918 are included.

The miles of line operated were as follows: Austria, 14,475; Belgium, 2,715; Brazil, 12,341; Bulgaria, 1,310; Canada, 38,879; China, 4,298; Denmark, 1,304; France (six big systems), 25,435; Germany, 38,965; Great Britain, 23,701; Holland, 2,395; India, 40,409; Japan (state railways), 5,917; New South Wales, 4,551; Norway, 1,998; Russia (Asiatic and European, except Finland), 42,646; Siam, 574; South Australia, 2,225; Sweden, 9,273; Switzerland, 3,378, and the United States, 233,204, that last-named figure being for class I roads.

Measuring achievements in ton-miles, the United States roads are so far ahead of any other system of transportation that there is really no comparison. In 1918, American roads had 400,397,000,000 ton-miles, while the nearest competitor, Russia, had 44,714,000,000. The other countries had ton-miles as follows: Austria, 11,808,000,000; Brazil, 812,000,000; Bulgaria, 204,000,000; Canada, 31,029,000,000; China, 2,384,000,000; Denmark, 463,000,000; France, 17,730,000,000; Holland, 1,173,000,000; India, 24,798,000,000; Japan, 5,637,000,000; New South Wales, 1,170,000,000; Norway, 333,000,000; Siam, 55,000,000; South Australia, 296,000,000; Sweden, 3,946,000,000, and Switzerland, 804,000,000. Owing to the figures being for different years, they are not exactly comparable.

On account of the great advances in rates, it is believed that the ton-mile revenue can be compared justly only for the year 1918, for which the figures, in cents, are as follows:

Canada, 0.736; China, 0.745; Denmark, 2.74; Holland, 1.46; India, 0.72; New South Wales, 1.584; Norway, 2.856; South Australia, 2.39; Switzerland, 4.283, and the United States, 0.849. The countries not mentioned have not compiled their statistics for 1918. The ton-mile receipts for Austria in 1913 were 1.509 cents; Brazil, in 1915, 6.95 cents; Bulgaria, in 1914, 2.575 cents; France, in 1913, 1.161 cents; Holland, in 1916, 1.46 cents; Japan, in 1917, .774 cents; Russia, in 1911, .933 cents; Siam, in 1916, 1.467 cents, and Sweden, in 1916, 1.342 cents.

The average haul per ton shown in the table, regardless of years, was as follows: Austria, 65.53 miles; Belgium, 53.5; Brazil, 75.29; Bulgaria, 86.28; Canada, 243; China, 114; Denmark, 57.27; Fracne, 77.3; Holland, 72.64; India, 242.88; Japan, 103.2; New South Wales, 94.14; Norway, 51.10; Russia, 155.05; Siam, 132.76; South Australia, 100.81; Sweden, 54.09; Switzerland. 37.72, and the United States, 321.06.

The average journeys of passengers, regardless of the year for which the statistics were compiled, were as follows: Austria, 17.42 miles; Belgium, 18.72; Brazil, 15.52; Bulgaria, 45; Canada, 63; China, 56; Denmark, 21.5; France, 22; Holland, 14.48; India, 39.24; Japan, 22.5 New South Wales, 14.68; Norway, 16.40; Russia, 69.07; Siam, 30.68; South Australia, 11.78; Sweden, 19.7; Switzerland, 11.52, and the United States, 39.33.

In the matter of average receipts per passenger-mile, the figures are unusually interesting because they show that traveling in the United States in cents is considerably above the average. The average receipts per passenger is considerably above the average. The average receipts per passenger per mile, as shown by the compilation of the bureau, are as follows: Austria, 1.079 cents; Belgium, 0.579; Brazil, 2.723; Bulgaria, 1.46; Canada, 2.103; China, .712; Denmark, 1.682; France, 1.053; Holland, 1.738; India, .52; Japan, .568; New South Wales, 1.221; Norway, 1.811; Russia, .653; Siam, 1.223; South Australia, 1.440; Sweden, 1.285; Switzerland, 1.522, and the United States, 2.414. Brazil is the only country showing a higher charge for passenger travel than the United States.

Statistics for British and German railways are incomplete. There is no showing as to either of them of ton-miles of freight traffic, the density of such traffic nor the average haul per ton. Blanks are also shown for the average receipts per ton-mile, for passenger-miles, passenger density, and the average journey per passenger.

## PAYMENT OF GUARANTY

*The Traffic World Washington Bureau*

Chief Justice McCoy of the Supreme Court of the District of Columbia has taken under advisement the petition of the Grand Trunk Western Railroad Company asking for a writ of mandamus compelling the Secretary of the Treasury to draw a warrant for $500,000 certified as due the company under the guaranty provisions of the transportation act by the Interstate Commerce Commission.

Harry C. Covington, formerly chief justice of the District Supreme Court, in arguing the case for the railroad company, said that if the Secretary of the Treasury can find refuge in the rulings or decisions of the comptroller of the treasury, he may defy Congress and the courts. He referred to the action of the Secretary in refusing to draw the warrant, because the comptroller held to do so would not be in accord with the act. The comptroller construes the act to prohibit partial settlements of the guaranty.

# Current Topics in Washington

**Blaming It on the New Law.**—Assertions so absurd as to be amusing are being made in Washington and elsewhere concerning the transportation law. Almost anything that happens to the teakettle engine on a railroad on the outskirts of civilization is blamed on the new law. Out in Wisconsin organized labor speakers have talked so glibly that some workmen believe they have been deprived of the right to strike. But the most pain-producing indictment yet brought is that the plight of the New England roads promises to break down the whole policy of Congress with regard to the railroads, as expressed in the transportation law. The indictment is not altogether clear, but the average reader would infer that the transportation law is the cause of the plight of the carriers in that part of the country. Those who have read the law, it is believed, and those who know the condition in which the Director-General left the railroads at the end of federal control, will be able to perceive the ridiculousness of that suggestion at a glance. The idea has been general that, had the transportation law not been enacted, many railroads would now be in the hands of receivers. It is doubtful if many of them would be operating as solvent concerns. The theory of the law is that the Commission shall make rates high enough to enable the railroads to earn six per cent on the value of the property devoted to transportation; also that the Railroad Labor Board shall grant a "living wage" to every railroad worker, on the theory that neither railroad labor, nor any other kind, will strike when it is obtaining such a wage. Uncle Joe Cannon, who has known enough about human nature to accumulate a fortune measured by seven figures, has an entirely different theory about strikes. His idea is that the Bible shows a more correct rule. He always quotes the language of that work about people waxing fat and kicking, when some near-philosopher begins talking about keeping labor or capital satisfied with its wages. His theory is that the laborer or the capitalist who is barely keeping ahead of the sheriff never has much of a fuss to make if he is not getting enough to buy superfine olive oil, pate de foie gras, and truffles. Such a one is thankful, the Nestor of the House thinks, when he avoids the crash he fears and the roars of dissatisfaction come from those who, if they were thrifty, could each month lay aside a considerable sum. It is suggested that, if the theory of the transportation law is sound, the Commission will soon make another increase in rates because it is becoming obvious that the present rates will not pay a "living wage" to both capitalist and laborer in the railroad industry. The managers of the railroads assert that the wages they are able to offer to dollars will not attract them to railroad service. No one has heard, in recent months, any complaints that the railroads are not able to obtain all the manual labor they need. In fact, the complaint is that there is so comparatively little to be done in the railroad shops that men are being laid off. There is work needing to be done, but capital labor refuses to work for the wages and guaranties of wages offered. In the language of President Wilson, it may be suggested, there seems to be a disproportion somewhere in the equation. Manual labor is willing to work—on its terms, which the railroads must meet. Capital labor, however, seems unwilling to take employment along side of manual labor in the railroad industry, hence the talk about the failure of the policy adopted by Congress which, thus far, has put off the bankruptcy that stared the railroads in the face when the government let go of the railroad property.

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**The New England Situation.**—In the New England case one of the most prominent bits of testimony was that the pay roll on the Boston & Maine had increased from \$6,300,000 in 1917 to \$15,300,000 in 1920. In the same time the wages of capital labor for steady employment in the form of real estate loans, in New England, has increased from about 5 per cent to about 6.5—an increase of less than one-third. For less steady employment, as for loans on merchandise, it has increased from 6 to 8 or 9 per cent—a maximum increase of 50 per cent. Wages of dollars have increased a maximum of 50 per cent, but for manual labor on the Boston & Maine something more than 142 per cent. In the meantime, the increase in rates has been about 110 per cent. If capital labor is to be as highly paid as manual labor, so that it will be as well satisfied, on the Boston & Maine, at least, another increase in rates of substantially one-third, it has been suggested, would be indicated as the remedy. Perhaps, however, manual labor and capital labor, other than that employed on the Boston & Maine, might tell the capital labor and the manual labor employed on that railroad to "chase themselves" if they came around with the collection plate of higher freight rates and passenger fares, demanding more for capital labor because there is a disproportion in the wages of the two kinds of labor on that railroad, in favor of the manual labor. In other words, New England and other users of the Boston & Maine might say they had not money enough to put more in the collection box for the two kinds of labor on that road. In still other terms, the suggestion might be made that the cost of the proposed service would be more than its value to those asked to pay; that they would prefer or be compelled to use motor trucks and the reliable old spring wagon to get their freight to market, rather than pay more to the two kinds of labor on that railroad.

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**The U. S. Railroad Labor Board.**—Those who pay the bills know little about the work of the U. S. Railroad Labor Board. Its sessions have been open to the public, of course, and the testimony about living conditions and a "living wage" has been given under oath, so that everything must be regular and as carefully checked as are the proceedings before the Interstate Commerce Commission to which capital labor must come for increases in its wages. The point, however, is that the public that pays the bills has given little or no attention to the taxing power exercised by the Railroad Labor Board. By its decree in June it added more than \$600,000,000 to the bill which the country must pay—or have something blow up. In round figures that is almost twice as much as any tariff law has ever raised in a year. No tariff bill was ever put through Congress with less than a million times as much talk about it as there was about the wage law passed by the Railroad Labor Board in June. It was put through because there was an implied threat by the labor organizations that if the board did not pass a bill taxing the people that much more, they would upset the apple cart of every man, woman and child in the United States and keep it upset until starvation compelled the owner to give the upsetters what they demanded, in the name of a "living wage." Starving capital labor now employed on the railroads cannot make such threats. The only threat it can make is that none of its brothers will take employment on the railroads if the bulk of the money contributed is to be so nearly monopolized by manual labor in the railroad industry as to leave practically nothing, or worse than nothing, for capital labor employed on many of the railroads. Every year since 1916 manual labor on the railroads has threatened strike. Capital labor is not exactly striking now, but no more capital laborers are asking for railroad employment, the effect of which, on the innocent by-standing public, is almost, if not quite, as bad as the threatened strikes of manual labor.

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**Cause of the Defeat of Congressman Esch.**—Friends of John J. Esch, defeated for the nomination of his party for another term in the House, came back to Washington from his district at the beginning of this session of Congress astonished to find that, according to organized labor leaders, his defeat was accomplished by them. Esch and his friends by way of answer point to the fact that Esch carried every railroad center but one in his district, but lost heavily in the country districts. They think they know why they lost the rural vote. In that part of Wisconsin the farmers brew their ale, they brew their beer and they do not stop nature when she puts more than one-half of one per cent of a kick in cider. Esch voted for the Volstead law. The farmers would have none of him. They preferred their home brew and their mulled cider and they voted against him. Even some of the ministers of the gospel worked against him on account of his vote for absolute, bone dry aridity.

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**Poor Business for Ocean Carriers.**—The disproportion in income and outgo that is afflicting the New England and other railroads appears also to have fallen like a blight on the ocean carriers making New York their home, or at least one of their chief ports of call. On December 18 no fewer than twenty American ships, including three trans-Atlantic passenger liners, were tied up in and around New York because there was no employment for them. Only passenger ships between New York and Jacksonville and New York and New Orleans reported more business than could be conveniently handled. Even the Cuba-bound ships were not being overworked. It was not sure, however, that a combination of locals to Cuban ports based on Jacksonville or New Orleans would not cut the through rate from New York to Cuba. Combinations that cut the through rates are not examples of candles the light of which is hidden under bushel measures. They are quickly discovered by those who can use them. As a matter of fact locals that cut the through rate often remain undiscovered only by transportation managers. That may explain why travel to Jacksonville and New Orleans is heavy while the travel direct to Cuba or the British islands is comparatively light. Provincial as New Yorkers are supposed to be, they find how to save a dollar or two, on occasion, especially if the saving is to be accomplished by visits to places like New Orleans and Jacksonville en route to and from the place where the swizzle stick still holds an honored place in the tool chest of the chef behind the brass foot rail.

**Supreme Court Decision in G. H. & S. A. Case.**—Although it seems to reverse the position of the Commission in a number of cases, the decision of the Supreme Court of the United States that the interstate commerce law did apply to transportation "from" Canada into the United States in March, 1917, in the case of Galveston, Harrisburg & San Antonio vs. L. H. Woodbury and Vincent Woodbury, handed down December 13, has attracted little attention at the Commission. In that case, the court, speaking through Associate Justice Brandeis, applied to the question of the amount of money the Southern Pacific's Texas corporation should pay for losing or destroying the Woodbury trunk, the $100 limit authorized under the second Cummins amendment, notwithstanding the fact that if a ticket or a bill of lading is a contract, the law of Canada, where the round-trip ticket was bought, did not apply in construing the terms of the contract. The position heretofore taken by the Commission has been that, while it had jurisdiction, under the act to regulate commerce, over such part of the transportation as took place in the United States on joint rates from Canada into the United States, all it could do would be to require the American carriers to withdraw from such joint rates, leaving a combination of locals, based on the international boundary line, to apply. The Commission never passed on a case exactly like the one presented to the court. One reason for the apparent lack of interest may be found in the fact that the law, as amended by the transportation act, does specifically apply on commerce to and from Canada. Justice Brandeis argued that if a carrier is engaged in commerce "from" Canada, it is generally also engaged in commerce "to" Canada; therefore, the act to regulate commerce, the statute in effect in 1917 when the Woodburys traveled, covered the transportation in question and the limitation of liability to $100 in case of loss or damage, carried in the tariffs, was valid as against the passengers. In view of the change in the law made by the transportation act, a question of that kind, on the face of the statute, could not now arise.

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**State Regulation of Prices.**—The Supreme Court of the United States, along in the Spring, will hear arguments on the question of whether the state has the power to regulate prices at which goods may be sold in the market. Indiana and Montana have enacted statutes on the assumption that it is as much within their power to say at what price the owner of coal may sell his property as it is for them to say at what price common carriers shall sell transportation not affecting interstate commerce by unjustly discriminating against it. Montana has an all-embracing statute on the subject of prices. Indiana has confined its attention chiefly to coal. In Montana the statute gives the railroad commission, converted into a trade commission, the power to establish reasonable margins of profit, which, of course, means maximum prices. Its first act was to order all articles offered for sale to be marked with the invoice price and the sales prices per unit. The federal district court said that law violated the far-reaching fourteenth amendment to the constitution forbidding the taking of property without due process of law. The Indiana coal men took the Hoosier statute to court before the state did anything to them. The court said they had not been hurt by the coal commission. From that denial of the relief they sought they have appealed to the Supreme Court, with the chance that they will be told that that court is not for the relief of persons who have not been hurt. The Indiana statute will expire by limitation in the Spring, so the Montana case may be the only one that will retain life to the time the supreme tribunal can pass on it. A. E. H.

# OCTOBER RAILROAD EARNINGS

*The Traffic World Washington Bureau*

The Association of Railway Executives has issued the following statement with regard to October earnings of the railroads:

"A tabulation from figures reported by the railroads to the Interstate Commerce Commission show that the net railway operating income for October of the Class One carriers totaled $91,761,090, which is approximately $20,674,000 or 18.4 per cent below the amount expected to be earned under the increased rates fixed by the Commission in accordance with the transportation act. The compilation is based on reports received from 203 railroads with a total mileage of 235,837 miles.

"On the basis of the net operating income for October, the railroads of the country would earn annually four and nine tenths per cent on the value of their properties as tentatively fixed for rate making purposes at $18,900,000,000 by the Interstate Commerce Commission. This is an increase of three-fourths of one per cent over that for September as computed from the net operating income for that month. To realize a return of six per cent on their valuation as provided by the act, the railroads should have earned $112,435,000 in October.

"Total operating revenues for the 203 railroads totaled $642,341,119, or an increase of 26 per cent over October, 1919, while operating expenses were $522,877,298, or an increase of 28.8 per cent compared with the same month last year. The net income is an increase of 20.2 per cent over that for October last year.

"Compilations show that the net operating income in every district fell below a six per cent basis, the Eastern district being 29.7 per cent below, the Southern district 16 per cent, and the Western district 9.2 per cent.

"For the Eastern district, total operating revenues for October were $293,506,618, or an increase of 31.8 per cent over the same month last year, while operating expenses totaled $247,460,209, or an increase of 32.3 per cent over the same month in 1919. The net operating income was $32,687,265, which is an increase of 38.1 per cent compared with that for October, 1919.

"Reports from the Southern district show that the total operating revenues during October were $93,156,679, or an increase of 22.1 per cent over one year ago, while operating expenses were $79,232,515, an increase of 22.9 per cent compared with the same month last year. This left a net operating income of $11,424,904, which was an increase of 24.9 per cent over October, 1919.

"Total operating revenues for Class One roads in the Western district were $255,677,822, which was an increase of 21.2 per cent over those for October last year. Operating expenses were $196,184,574, or an increase of 26.9 per cent, while the net operating income was $47,648,921, which was an increase of nine and one-half per cent over the same month in 1919.

"On the basis of their net operating income for October, the annual earnings of the carriers in the Eastern district would be at the annual rate of 4.22 per cent, those in the Southern district 5.04 per cent, and the Western district 5.45 per cent. Combining the net operating income for both September and October, the percentage for the Eastern roads would be 3.73 per cent, Southern 4.97 per cent, and the Western, 5.15 per cent.

"Reports show that the net operating income of the 203 carriers for October was 81.61 per cent of the amount expected to be earned by them under the rates fixed by the Commission, while the net income for both September and October was 75.37 per cent of the amount anticipated for both of those months.

"Compared with September, the net operating income for October of the Class One railroads is an increase of $16,450,779, increases being shown for the Eastern district of $6,576,668, Southern district $1,809,564, and the Western district $8,064,547."

The Commission, December 21, put out its final summary of revenues and expenses of 188 class I roads and 15 switching and terminal companies for October and the ten months ending with October. A partial summary covering all but twelve of these roads was put out by the Commission December 13 (see Traffic World, Dec. 18, p. 1198).

The partial summary showed a net railway operating income for October of $82,947,374, while the final summary shows a net of $86,455,487. These totals differ slightly from those compiled by the Bureau of Railway Economics, on which the Association of Railway Executives based its statement showing the net for October to be approximately $91,000,000. The difference is attributed to different treatment of certain items by the Commission and the Bureau.

For the ten months ending with October, the final summary of the Commission shows, the net was $1,078,208. The partial summary showed a deficit in net railway operating income of $6,258,610.

# PANAMA CANAL TRAFFIC IN OCTOBER

The number of ocean-going commercial ships passing through the Panama Canal during the month of October was 238, in addition to which there were 26 United States government vessels, including 1 battleship, 2 cruisers, 2 transports, 10 Eagle boats, 2 destroyers, 3 minesweepers, 1 gunboat, 1 navy supply ship, and 4 colliers with coal for the United States Navy.

The Panama Canal net tonnage of the 238 commercial vessels aggregated 935,579 tons, being 73,206 tons less than for the preceding month. Their registered gross tonnage was 1,190,936, and registered net tonnage, 754,540. The total cargo carried was 991,066 tons of 2,240 pounds, being 18,491 tons less than for September. Of this total, 3,143 tons were carried as deck cargo. The total tolls earned were $911,854.58, as compared with $1,010,166.38 for September. Ocean-going commercial ships passing through the canal averaged 7.7 per day, and the average tolls per vessel, $3,831.32. Tolls collected amounted to $911,854.58.

The United States coastwise trade for October included 20 vessels with a total Panama Canal net tonnage of 85,915, and cargo of 79,085 tons. There were 13 vessels from the Atlantic to the Pacific with a total tonnage of 51,477 and cargo of 44,659 tons; and from the Pacific to the Atlantic, 7 vessels with a total tonnage of 54,438 and cargo of 34,426 tons.

### HEARING ON OCEAN FREIGHT RATES

A hearing will be held before the United States Shipping Board in Washington January 4 on ocean freight rates on corn, oats, wheat and related products and commodities. Until the board has reached a decision, it was announced, the present level of rates will be maintained. The recent action of the board in establishing a 5-cent differential on flour over wheat will be gone into at the hearing.

# Decisions of Interstate Commerce Commission

## EXPRESS CONSOLIDATION

**CASE NO. 11366** (59 I. C. C., 459-470)

**IN THE MATTER OF THE APPLICATION FOR CONSOLIDATION OF EXPRESS COMPANIES**

Submitted August 18, 1920. Opinion No. 6456.

Consolidation of the express transportation business and property devoted to that business of the Adams, American, Wells Fargo & Co. and Southern express companies into the American Ry. Express Co. approved and authorized.

BY THE COMMISSION:

By application filed March 22, 1920, as amended, we are requested to approve and authorize the consolidation of the express transportation business and the property devoted to that business of the Adams, American, Wells Fargo & Co., hereinafter referded to as the Wells Fargo, and Southern express companies into the American Railway Express Company, hereinafter called applicant. The application is made under paragraph (7) of section 5 of the interstate commerce act, as amended by section 407 of the transportation act, 1920, and reading as follows:

> The power and authority of the Commission to approve and authorize the consolidation of two or more carriers shall extend and apply to the consolidation of four express companies into the American Ry. Express Co., a Delaware corporation, if application for such approval and authority is made to the Commission within thirty days after the passage of this amendatory act, and pending the decision of the Commission such consolidation shall not be dissolved.

At the beginning of the period of federal control there were seven express companies operating over the railroads of the United States, the Adams, American, Wells Fargo, Southern, Great Northern, Western and Northern express companies. Of these, the first four named operated over approximately 92 per cent of the railroad mileage of the country, and transacted approximately 95 per cent of the express business of the country. After the government assumed control and operation of the railroads the Director-General of Railroads declined to carry out the separate contracts between the railroads and express companies under which the express business had theretofore been conducted, but advised the express companies that if they would form a single corporation he would make a contract with that corporation to conduct the express business as his agent. In June, 1918, the Adams, American, Wells Fargo and Southern express companies, which jointly had secured by lease the express business and the property devoted to that business of the other express companies hereinbefore mentioned, entered into a contract with the Director-General by which it was provided that the express companies would cause to be organized a corporation to carry on the express transportation business for the Director-General. Thereupon, the American Railway Express Company was organized under the laws of Delaware and, under a contract with the Director-General, took over the express business upon the railroads under federal control as agent of the Director-General. The Adams, American, Wells Fargo, and Southern express companies exchanged all the property devoted by them to the express transportation business, estimated by the Director-General to be of the value of $30,000,000, as of November 30, 1917, together with $3,000,000 in cash for working capital, for the stock of the American Railway Express Company. Including additions and betterments not charged to operating expenses made between the latter date and July 1, 1918, the authorized issue of capital stock of the applicant at par aggregated $34,642,109.64.

A number of protests against the approval and authorization of the consolidation, in the form of resolutions adopted by commercial organizations, letters and telegrams have been received by us. In most of these complaint is made that the service rendered by applicants was and is inadequate and unsatisfactory, and this is attributed largely to the lack of competition. In a number of others the policy of at least two of the predecessor companies with respect to the adjustment of claims which arose prior to the consolidation is criticized, and it is urged that if the consolidation is authorized suitable provision should be made to protect the rights of claimants.

The railroad commissions or other public utilities commissions of 33 of the states were represented at the hearing. Only four states voiced objections to granting the application on ground other than the matter of old claims against the Adams and Southern express companies. The State Corporation Commission of Virginia offered evidence regarding the claims situation, but the other state commissions offered no evidence. A representative of the Richmond Chamber of Commerce also testified with respect to the claims situation. Representatives of the National Poultry, Butter & Egg Association, which has 1,200 members scattered throughout the country, and the Boston Fruit & Produce Exchange, which has a membership of 900, offered evidence to show that applicant's service was inadequate. They contend that this is due to lack of competition and are opposed to the continuance of the consolidation. A representative of the National Industrial Traffic League, an association of commercial organizations, firms and individuals, located at points throughout the country, appeared on behalf of that organization, the Boston Chamber of Commerce, and the New England Traffic League in support of the application.

Applicant admits that its service has been and is unsatisfactory, but attributes this to abnormal conditions growing out of the war. In explanation of this condition the testimony offered for applicant may be summarized as follows:

When applicant began business the transportation agencies of the country were in a very bad condition owing to the war. This situation had existed for some time prior to the beginning of federal control. The rail companies operating over the major mileage of lines in the United States had violated their contracts with the express companies for many months preceding the period of federal control. At the time of entering into its contract with the Director-General, applicant was assured that better facilities and equipment would be furnished after it began business, but the conditions were such that these assurances could not be carried out, except in part. Immediately prior to federal control, due to war-time demands for equipment, the railroads were unable to supply a sufficient number of cars of the proper type to enable the express companies to render their usual service. Many of the cars customarily used in express service were used by the government in the movement of troops. This accentuated an already bad situation, with the result that the express company had to utilize any kind of equipment available; and not much was available but box cars not equipped for high speed and neither lighted nor heated. Even when it was able to secure first-class equipment suitable for high speed and placed it in trains, the speed of the trains was slowed down to that required for inferior equipment therein. In addition to being called upon to transport traffic which customarily moved by express, it was required to handle a large amount of government war business which ordinarily should have moved as freight. This traffic embraced not only merchandise but also high explosives moving in carloads and train loads. Prior to our entering the war a great many industrial concerns devoted to the manufacture of war supplies and ammunition for European nations came into being, and as the wages paid employes in those concerns were higher than those paid to employes of the express companies many of the latter left the service for employment in those plants. After this country entered the war many experienced men were lost to the express companies by reason of voluntary enlistments or by the draft. The inability of the railroads to furnish sufficient and proper facilities, and the numerous embargoes issued by them on certain classes of freight, forced upon applicant a large volume of traffic which ordinarily moved in less-than-carload lots by freight. The express business had increased rapidly and continuously for some years, and the additional traffic forced upon applicant taxed its facilities to the utmost, made it impossible to secure sufficient street equipment to handle the enormous volume of business, and prevented applicant from furnishing the service it desired to give.

Applicant urges that the service rendered by it, admittedly not satisfactory, has been and is far better than could have been performed by the predecessor companies, because the unification of their facilities under the one management effected by the consolidation permitted better distribution of those facilities and rendered practicable many economics impossible under separate operation. It is said that formerly each of the predecessor companies had its quota of vehicles traversing the same routes both in the pick-up and delivery service, carrying on many occasions only partial loads. The consolidation enabled this equipment to be handled as a whole and distributed throughout the cities so that the vehicles were utilized more nearly to their capacity, besides avoiding duplication of service.

It was testified that great savings had been accomplished by reason of one company's transacting the business in lieu of four as formerly, through the elimination of duplicate wagon service, duplicate offices in various cities, the establishment of a uniform accounting system and the consolidation of various departments of express business into one. It is estimated that these methods have reduced the cost of operation over $13,000,000 annually below what it would have cost the former companies.

Applicant states that better service also results by reason of the fact that the consolidated company routes traffic via the direct lines, thus reducing distance and time of transportation. It is said that with two or more companies in the field it was natural that those companies should endeavor to secure the long

haul on traffic. As an illustration, it was testified that formerly three companies operated in New York City, the American, Adams and Wells Fargo. Shipments from New York to Pittsburgh, Pa., could be delivered at destination by any one of the three companies. The American Express Company operated over the New York Central Lines and its route to Pittsburgh was via Ashtabula and Youngstown, Ohio. The Adams Express Company operated over the Pennsylvnia Railroad, the direct route, and the express matter dispatched by it would be delivered in Pittsburgh before the traffic handled by the American had passed Buffalo en route to Pittsburgh.

The commissions of Florida, Louisiana, Mississippi and Texas oppose without reservation the granting of the application on the ground that a monopoly will be created which can never be broken; that the competing railway systems which are to come into existence under the plan of this Commission in accordance with the provisions of the interstate commerce act ought, in the public interest, so far as possible, to be served by competing express companies; and that hence this consolidation must necessarily be out of harmony with any plan which we may make for consolidation of rail lines.

It is urged by applicant that the consolidation of these companies was not voluntarily accomplished for the purpose of securing a monopoly of the express business, but that it was compelled by the conditions and circumstances existing at the time. It is insisted that the approval by us of the organization and its continuance in business will not destroy competition; that applicant at present competes for a large part of its business with the parcel post, which operates on all lines in the United States; that in normal times it competes for package business with fast freight lines hauling less-than-carload traffic; and that it is in direct and keen competition with motor trucks which operate over considerable distances between principal cities in general. It is further said that it is doubtful if the old companies would resume business. Officials of the Wells Fargo, Adams and Southern express companies testified that they would advise those companies against returning to the express transportation business. The provisions of the interstate commerce act with respect to prospective consolidation of rail carriers contemplate that competition shall be preserved, but do not require that competition shall be inaugurated or increased.

It is further urged on behalf of the four state commissions last named that under sub-paragraph (b) of paragraph (6) of section 5 of the interstate commerce act, as amended, we must first find the value of the properties now operated by the applicant before we can authorize this consolidation. The provision referred to reads as follows:

> The bonds at par of the corporation which is to become the owner of the consolidated properties, together with the outstanding capital stock at par of such corporation, shall not exceed the value of the consolidated properties as determined by the Commission. The value of the properties sought to be consolidated shall be ascertained by the Commission under section 19a of this Act, and it shall be the duty of the Commission to proceed immediately to the ascertainment of such value for the properties involved in a proposed consolidation upon the filing of the application for such consolidation.

It is argued that this provision is designed to prevent overcapitalization of the company in acquiring the property of consolidating rail carriers; and that there is as much reason for preventing overcapitalization in the case of an express company as in the case of a rail carrier. The consolidation here in question has been accomplished, and we are of opinion that it is governed by paragraph (7) of section 5, rather than by subparagraph (b) of paragraph (6) of section 5. Therefore it is not necessary as a condition precedent to its approval and authorization that we ascertain the value of the properties consolidated.

On behalf of the Wabash Railway it is stated that on June 1, 1911, that road entered into a contract with the Wells Fargo providing for the conduct of the express business on the lines of that carrier for a period of twenty years commencing August 1, 1911; that when the government assumed control of the railroads the Wabash Railway was unable in its own name to continue operation under the contracts, but that under an arrangement with the Director-General, who declined to be bound by any of the contracts between the express companies and the rail carriers, the Wells Fargo continued to operate over the lines of the Wabash Railway; that when the consolidation of the express companies was effected the Wells Fargo announced that it was no longer bound by the contract with the Wabash; and that since the termination of federal control the Wells Fargo and the consolidated company have declined to be bound by the terms of the contract. It appears that the Wabash Railway brought suit to recover under the contract approximately $190,000 from the Wells Fargo for services rendered the express company during the period of federal control preceding the consolidation of the express companies and that this suit is pending in the courts. The Wabash Railway asks that we impose as a condition precedent to the approval of the application here in question that applicant assume and discharge the obligation of the Wells Fargo, or that the consolidated company assume and carry out the contract referred to, subject to the determination of its validity and enforceability as against the Wells Fargo by a court of competent jurisdiction. The president of the Wells Fargo testified that that company was able and willing to pay any judgment rendered against it in the courts. We think that this controversy between carriers is one which should be determined by the courts and that the imposition of the condition requested by the Wabash Railway is not such as is necessary or required in the public interest.

One of the objections to the unqualified approval of the consolidation which is most strongly urged upon our consideration arises from the policy of the Adams and Southern express companies in the settlement of loss-and-damage claims which accrued prior to the consolidation. When applicant took over the express business July 1, 1918, an arrangement was made between it and the predecessor companies whereby claims which had arisen against the latter were adjusted by applicant for account of the predecessor companies. On June 11, 1918, the predecessor companies issued a joint circular signed by the president of each, addressed to their officers, agents and employes, as follows:

> We are beginning to find evidence of anxiety among patrons who have claims outstanding against our respective companies, the impression seeming to prevail that unless the claims are paid before July 1st, there would be difficulty in collecting them.
>
> We want to say to you that there is no need for any anxiety on the part of any patron or shipper, as an agreement has been entered into between our respective companies whereby the handling of these claims will be undertaken by the new company. No suits are necessary as the new company will undertake to dispose of all of these matters with promptness and without unnecessary trouble or annoyance to our patrons.
>
> It is hoped through this notice that persons having claims against cur several companies will more fully understand the conditions that obtain, and be willing to allow their claims to take the same course as has been followed in the past. The new company will be as anxious as the public to have all old claims disposed of and out of the way, and every energy will be put forth in that direction.

From the time it began business until the early part of 1919 applicant made settlement of the claims which had accrued against all the predecessor companies, and it still continues the adjustment of the claims which accrued against the American and Wells Fargo express companies.

Applicant submitted a statement taken from its books, showing that from July 1, 1918, to June 20, 1920, it paid and charged in the accounts of the predecessor companies loss-and-damage claims aggregating $4,503,450.01 for the Adams; $4,131,026.16 for the American; $1,064,775.30 for the Southern; $2,926,793.99 for the Wells Fargo; and that it also paid for its own account claims amounting to $29,492,644.82. The amounts of the claims against the predecessor companies on July 1, 1918, are not shown. Witnesses for the predecessor companies estimated that on July 1, 1920, claims still pending, exclusive of those on which suits had been filed, amounted to $75,000 against the American; $70,000 against the Wells Fargo; and between $50,000 and $60,000 against the Adams and Southern, respectively. Since the argument, in compliance with a request made at the hearing, counsel for the Adams and Southern express companies, by letter, states that the claims filed against those companies for loss and damage amounted to $11,285,675.97; that the total amount paid by and for these companies for loss and damage to July 1, 1920, was $6,924,305.60, leaving a balance of $4,361,370.37 unpaid, of which $2,382,163.82, it is said, represents claims withdrawn by claimants and claims declined for various reasons, and $1,979,206.55 represents unsettled claims, mostly the subject of suits.

In the early part of 1919 the Adams and Southern express companies withdrew from the former arrangement, and since have themselves conducted the adjustment of claims filed against them. Many protests have been received and evidence was offered at the hearing, criticizing the treatment accorded claimants by these companies. It is said that their withdrawal from the former arrangement necessitated the presentation of claims at their offices in New York City; that they had no agents or property in states other than New York and that legal service could be made upon them only in New York. It is further said that in many instances little or no attention was given to letters from claimants, and that in some instances, while in correspondence with the companies with respect to claims and before any declination of the claims, claimants were advised that their claims were barred by the two-year-and-one-day limitation clause contained in the express receipt. Even after offering assurances to those seeking adjustment of claims through correspondence that the limitation period would not debar claims until 30 days after declination claimants were advised, without prior declination, that such claims were barred by the limitation clause. They finally offered to settle claims on a basis of 60 per cent provided the claims were prima facie valid. This offer, at first made to individual claimants, was given general publicity. It was testified by one of the protestants that the acceptance of this offer was without avail.

On behalf of the Adams and Southern express companies it was testified:

> In February of 1919, the Adams Express Co. found itself in a very serious situation. The claim liability reported by the American Ry. Express Co. at that time was nearly $5,000,000. The actual outstanding claims developing since that time increased that to upwards of $8,600,-

009. The Adams Express Co.'s finances were not in such shape to meet those matters as they stood at that time. It was a very serious question as to whether they would be able to survive without going through a receivership, and having recourse on the liability of their individual stockholders; careful study of the situation developed the idea that the Adams Express Co. might be able to pull out and the Southern as well by confining their payments to the strict liability. The managers of the Adams Express Co. decided they would pay their strict legal liabilities and no more, feeling they stood as trustees on the one hand to the stockholders and on the other that they could not afford to be liberal to either at the expense of the other and that therefore the only policy they could pursue would be to take the same position they would have taken in behalf of the receivership and to confine payments to the strict legal liabilities of the company in every case, without discrimination, and that course was followed to the letter by both the Southern Express Co. and the Adams Express Co.

It was further testified that the Adams and Southern express companies had voluntarily accepted service in a large number of suits brought against them in states other than New York, but that they had declined to do so in cases where they would be at a disadvantage and were of the opinion that they could not obtain substantial justice. With respect to the 60 per cent offer made by these companies it was stated that this was a measure adopted to expedite settlement in view of the enormous volume of loss and damage claims, which it appeared hopeless to investigate to a conclusion within a reasonable time limit; and that an investigation of claims statistics indicated that approximately but 60 per cent of the aggregate amount of claims represented valid claims.

The record indicates that not only have these two companies disregarded their moral obligation with respect to many claims, but that apparently they have endeavored by a studied plan to avoid even their strict legal liability. But little criticism is offered by protestants of the method of handling their claims against the American Express and Wells Fargo companies or against the consolidated company.

As previously observed, the consolidation having been accomplished, there is today no actual competition between express companies. Even prior to federal control and the existing consolidation, there was practically no competition so far as express transportation rates and charges were concerned, express rates being made on the block system prescribed by us and applying alike to all express companies. While to some extent there was competition with respect to the service rendered, the economies and elimination of wasteful services resulting from the consolidation would appear to be more than sufficient to offset any advantages to the public growing out of the separate operation of the four express companies, even if, on a denial of this application, they should resume operations as such, as to which there appears to be some doubt. As to the rates and practices of the consolidated company, we may regulate and control them to the same extent as if there were separate operation.

While the methods of the Adams and Southern express companies in the settlement of claims against them merit the severest condemnation, we are not persuaded that the approval by us of the consolidation, if otherwise in the public interest, should be conditioned as urged by certain of the protestants so as to require the constituent companies to provide for the handling of claims and the service of legal process in the jurisdictions where they formerly operated and to revive claims which may have been barred by the two-year-and-one-day limitation with respect to filing suit. We are not authorized under the interstate commerce act to approve the maintenance of the existing consolidation and in connection therewith to prescribe terms as to the manner in which these claims shall be handled as a condition of the continuance of the consolidation. Nor are we authorized to require the resumption of operation by the constituent companies. We are merely empowered to approve and authorize the existing consolidation. The principal objections raised are that claimants must bring suit in New York and that many of the claims, while meritorious, are too small to justify the expense of suit. Under such circumstances hardship obviously results to the claimants, but that does not justify us in requiring the express companies, as a condition precedent to our approval of the consolidation, to waive any legal defenses which they may elect to make in the courts. We have repeatedly held that we have no jurisdiction over claims for loss and damage. However, we do have jurisdiction to determine the reasonableness and propriety of carriers' published rules and regulations relating to transportation, and in National Industrial Traffic League vs. Express Co., 58 I. C. C., 304, following Decker & Sons vs. Director-General, 55 I. C. C., 453, we found that the clause of the uniform express receipt limiting the period for filing suit to two years and one day after delivery or after a reasonable time for delivery was unreasonable in that it did not provide for a reasonable time within which to file suit after claims which had been under consideration by the express companies had been declined. While the courts have frequently upheld the right of a carrier to limit the period within which suit shall be brought against it, such limitation, to be successfully pleaded by the carrier, must be reasonable. Texas & Pac. Ry. Co. vs. Leatherwood, 250 U. S., 478, 481; Mo., Kans. & Tex. Ry. vs. Harriman, 222 U. S., 657, 672-673.

Upon consideration of all the facts and circumstances of record we are of opinion and find that the public interest will be promoted by the consolidation. An order will be entered approving and authorizing the consolidation.

McCHORD, Commissioner, dissenting:

I cannot agree with the conclusion reached by the majority that the public interest will be promoted by this consolidation.

The authorization of the consolidation will destroy every semblance of competition in the express business both as to rates and service, thus confirming an existing monopoly. It may be true that there is no competition as to express transportation charges, but, prior to the consolidation, there was competition with respect to service which was of benefit to the public. It will now be practically imposible for another company to enter into the express business in competition with this consolidated company. We, of course, may regulate the rates and certain of the practices of the American Railway Express Company, but we will have no control over its attitude toward the public. We cannot require it to render to the public that efficiency, courtesy, and fair dealing which competition compels.

It is my view that the time has come when the carriers should give serious and further consideration to the question of conducting the express business themselves. That business has reached such proportions that it is now a parasite upon the freight traffic of the railroads. They should no longer permit outside agencies to transact it. It can be clearly demonstrated that the carriers can readily adapt their existing organization, equipment, and facilities to enable them to handle the additional traffic. It would need but slight extension of certain branches of their organization, the acquisition of some additional equipment and possibly some enlargement of present facilities to place them in a position to satisfactorily conduct the express business, and at considerably less expense than it is being done by the express company. The transportation and handling of this class of traffic by the railroads would undoubtedly yield them greater profit than they receive under the present method, render it possible to materially reduce the charges for the service to the public and result in distinct and much needed improvement in the safety and celerity with which the traffic is handled.

Nor can I agree with the conclusion reached by the majority that we are merely empowered to approve and authorize the existing consolidation and cannot prescribe the terms and conditions under which the consolidation may be approved. We are empowered under the act, with respect to the consolidation of railroads, to approve and authorize such consolidation "with such modification and upon such terms and conditions" as we may prescribe. The provision of the act under which this application was filed reads, "The power and authority of the Commission to approve and authorize the consolidation of two or more carriers shall extend and apply to the consolidation of the four express companies * * *." It, therefore, necessarily follows that the same power with respect to approving and authorizing consolidation of railroads extends to the consolidation of the express companies.

It is my view that in no event should we approve this consolidation without making provision for the protection of claimants in their loss-and-damage claims which accrued against the constituent companies. When it is recalled that all the assets of the consolidated company were acquired from the constituent companies and that, as a matter of fact, the consolidation is nothing more or less than the merging of property of the constituent companies, it is only just that that property should be subject in the various states to meritorious claims which accrued before the merger. Possessing the power to prescribe just and reasonable conditions precedent to the consolidation, our failure to so prescribe lays down the bars to the sharp practices of certain express companies set forth in the majority opinion. It is my view that we cannot escape the responsibility placed upon us by the interstate commerce act in this matter, that has such grave and far-reaching consequences, by merely stating that the courts have jurisdiction over loss-and-damage claims.

For these reasons I am unable to concur in the majority opinion.

MEYER, Commissioner, also dissents.

## COAL RATES TO SEABOARD, N. J.

The Commission has dismissed No. 11122, Seaboard By-Product Coke Co. vs. Monongahela, Director-General, et al., opinion No. 6484, 59 I. C. C. 453-5, holding that the rates on soft coal from four mines on the Pittsburgh & Lake Erie, in the Pittsburgh district to Seaboard, N. J., had not been shown to be unreasonable, although in the case of some shipments the carriers were willing to refund on four cars down to the subsequently established lower rate and notwithstanding the agreement between the complainant and the Pittsburgh & Lake Erie that several re-routed cars should not be forwarded until the lower rate had been published.

The allegation was that the rate of $2.88 on twenty-seven carloads of coal shipped on January 14 and 17, 1918, was unreasonable to the extent that it exceeded a subsequently established rate of $2.10. One car moved over the route originally specified; that is, Pittsburgh & Lake Erie to Connellsville, Western Mary-

land to Shippensburg, and Philadelphia & Reading to destination. The routing on the other cars was the same as on the one car to Shippensburg, but from that point it was Reading to Allentown, Pa.; Central of New Jersey to Phillipsburg; and Lackawanna to destination.

At the solicitation of the Pittsburgh & Lake Erie the routing of the twenty-six cars was changed so they moved via Sharon, Pa., and the Erie to destination. That was the only available open route when the change was made.

The Commission held that refund could not be made on the four cars to the basis of the subsequently established rate, even on the four cars, because the shipper authorized the change of routing.

"We have frequently held that the voluntary reduction of a rate is not in itself sufficient to establish the unreasonableness of a rate," said the Commission. "Nor can the agreement urged be accepted as proof of unreasonableness of the higher rate."

## REPARATION ON COAL

Reparation will have to be made on forty carloads of barley and culm hard coal involved in No. 11249, Ludlow Manufacturing Associates vs. Philadelphia & Reading, Director-General, et al., opinion No. 6483, 59 I. C. C. 451-2, the Commission holding that the combination rates imposed were unreasonable to the extent that they exceeded the joint rates on prepared sizes, pea and buckwheat No. 1, in effect from December 28, 1917, to March 31, 1918, which was $2.85; from April 1 to June 24, 1918, $3.00; and after June 25, 1918, $3.60. The rates charged were $2.95, $3.16 and $4. The coal moved from Mahanoy and Shamokin, Pa., to Ludlow, Mass., via the Reading to Newberry Junction, New York Central to West Albany and Boston & Albany to destination. One shipment, moving after June 25, was undercharged.

## LUMBER TRANSIT PRIVILEGES

The Gulf, Mobile & Northern having made applicable mileage rates on lumber from points on its line and short line connections, to Meridian, Miss., that are satisfactory to shippers, the Commission has vacated and set aside the basic order creating I. & S. No. 1203, "Transit Privileges on Lumber at Mississippi and Alabama Points," opinion No. 6482, 59 I. C. C. 448-50. The tariffs in question were suspended from August 31 to December 20, because, if allowed to become operative, they would have resulted in the application of high combinations on lumber from points of origin on the Gulf, Mobile & Northern, which, for months, has been trying to get rid of joint rates on which it has been obtaining very short hauls, because the traffic was being delivered to the nearest connecting east and west carrier, instead of hauls to the most distant east and west connection.

The purpose of the suspended tariffs was to get rid of such rates from points of origin on the Gulf and its short line connections. The Gulf contended that it was entitled to collect the inbound rates to all transit points served by it; to police the transit; collect and retain the transit charges; and to issue the outbound billing even when the shipment had to be delivered by it to a connecting carrier at the transit point.

A part of the tariffs, not suspended, increased and made uniform a transit charge of 2.5 cents at transit points, especially at Meridian, Miss., whence came the protest that caused the suspension. The Gulf admitted that the combinations would be high. It met that contention by proposing a mileage scale, which was acceptable to the protestants and which the Commission allowed to be made operative on short notice on December 6, thereby removing the cause of dissatisfaction with that part of its effort to obtain more out of the traffic it has to deliver at near-by junction points.

## TERMINAL CHARGES AT GALVESTON

In a report by Commissioner Ford, on I. and S. No. 1199, which also, at the request of the parties involved, includes I. and S. No. 1219, opinion No. 6493, 59 I. C. C. 490-5, the Commission held that increased charges on export, import and coastwise traffic to and from shipside at Galveston, Texas City, Beaumont and Port Bolivar, Tex., had not been justified and that the tariffs which would have had the effect of increasing such charges must be canceled.

Forty-six tariffs, filed by the railroads serving the ports mentioned, were suspended on protests of commercial organizations. The railroads filed the tariffs with a view to escaping the effect of increased wharfage charges filed by the Galveston Wharf Company.

The condemnation runs to the tariffs which seek to increase the charges on traffic "through" the ports. The effect of the railroad tariffs would be to limit the absorptions made by the railroad companies and imposing the excess upon the shippers. Such of the tariffs as would not have the effect of increasing the charges through the port were not condemned.

The railroads showed that since 1911, when the wharf company filed its first tariff with the Commission, it has obtained increases in charges, for loading and unloading, running from 83 to 100 per cent, and 157 per cent for the switching done by it. In that same time the railroad carriers have obtained only two general increases, namely, 25 and 35 per cent. They asserted that the absorptions proposed by them would give the wharf company the benefit of the increases allowed to the railroads by General Order No. 28 and the Commission's most recent decision in Ex Parte No. 74. They suggested that they should not be called upon to contribute more, in percentage, to the wharf company, than the public is called upon to contribute to them.

The protesting commercial organizations presented exhibits tending, they claimed, to show that the charges of the wharf company were not out of line with charges at New Orleans and suggested that if the Commission sustained the declination of the railroads to absorb the full amount of the wharfage charges, Galveston would be at a disadvantage with New Orleans.

Specifically, the Commission held that the railroads had not sustained the burden of justifying the increased through charges. In all cases in which the items are published in connection with shipside rates, cancellation will be required. That will also apply to similar items in Leland's I. C. C. No. 1303, suspended in I. and S. No. 1219, which was not suspended in the main case, but caught by the net in No. 1209, because the parties to Leland's tariff requested that the record in No. 1199 be made to cover the Leland proposal.

## PAYMENT OF FREIGHT BILLS

In a report on further hearing in Ex Parte No. 73 (the case in which all matters of credit for the payment of freight bills are considered), opinion No. 6485, 59 I. C. C. 456-8, the Commission has granted the prayer of the Tidewater Coal Exchange and the Sewells Point Coal Exchange that the 96-hour credit rule as applied to demurrage charges on tidewater coal be modified so that the credit period shall begin to run for the customary 96 hours, from the first 4 p. m. after the time when the exchanges present demurrage bills to individual shippers. The original report in this case was made in 57 I. C. C. 591.

The railroads joined with the exchanges in asking this modification of the rule. It was made in the interest of economy in time and simplification of accounts. At the hearing the railroads and the shippers said that, in the ordinary course of business the railroads consume about twenty days in rendering bills for demurrage to the exchanges, which act as agents for the shippers. It takes the exchanges about as long to verify and check the accounts as rendered, and then they bill individual shippers for the amounts due by them to the different railroads that have brought coal to the transshipment piers.

It was represented to the Commission that the utmost confusion would result from the payment, by the exchanges, of the bills as rendered, without checking. Payment by the exchanges, without checking, would require refunds to the exchanges on errors discovered by them and then refunding on errors discovered by the shippers. Payment by the shippers, after checking by the exchanges, will require only one refunding operation, and that only in the event the shippers find errors not found by the exchanges. In disposing of the matter the Commission said:

"The statute forbids an extension of credit except under such rules and regulations as we may prescribe. Extension of credit, as such, is not asked in this petition, for credit could be of no benefit to these exchanges. What is asked is that the normal and customary delays due to the extensive dealings which these exchanges have with both carriers and shippers be brought within the law by suitable provisions in our rules and regulations made in the light of such law.

"The petitioners do not seek to evade the payment of demurrage charges within 96 hours after the amount accrued against individual shippers has been determined nor would unjust discrimination arise from the practice described, because all persons who forward coal for transshipment to these ports may become members of the exchanges. In the light of the special circumstances surrounding the handling of coal by the petitioners we find that the period of 96 hours heretofore fixed by us for the payment of transportation rates and charges, in so far as applicable to the payment of demurrage upon the transportation herein considered, may be computed from the first 4 p. m. following the time when the demurrage bills are presented by the petitioners to individual shippers, members thereof."

## ARKANSAS RATES AND FARES

With Commissioner Eastman noting his usual dissent, the Commission, in a report written by Chairman Clark, has disposed of No. 11775, Arkansas Rates and Fares, opinion No. 6468, 59 I. C. C. 471-9, in substantially the same terms as it employed in deciding the New York, Illinois and Wisconsin fare cases. The basis of interstate fares and excess baggage charges prescribed by the Commission in Ex Parte No. 74 is to be made effective in Arkansas on or before February 15, 1921, notwithstanding Arkansas statutes.

In this case the Commission had before it only regular passenger fares, excess baggage charges and rates on road building materials. The Arkansas corporation commission has allowed the rates, fares and charges prescribed by the federal body in Ex Parte No. 74 to become operative in that state, except for regular passenger fares, excess baggage charges and rates on road building materials.

The Arkansas body failed to act on regular passenger fares, excess and excess baggage charges because the Arkansas statutes do not authorize it to waive their terms as to them. Arkansas law, being silent on the surcharge for parlor car space, the Arkansas commission imposed that charge in accordance with the basis laid down in the federal commission's decision.

As to the rates on road building materials, the Arkansas commission expressed a desire to co-operate with the federal body, but that body said that it had had no opportunity to co-operate. Chairman Clark in his report said the Arkansas commission had challenged the propriety of certain procedural steps taken by the carriers on the ground that the dictates of orderly procedure and the demands of substantial justice require that resort should first be had to remedies afforded by the tribunals of the state. He said the corporation commission suggested that adherence to a proper course of procedure would have required the carriers to seek injunctions against the operation of the Arkansas statutes, whereupon the corporation commission would have again taken up the question and decided it upon its merits. It was suggested that the case be continued until the barrier that prevented action by the state commission from acting had been removed.

As to rates on road building materials, Clark said the state commission had expressed a desire "to co-operate with the Interstate Commerce Commission in fixing what is a reasonable rate." It was asserted that no advantage was sought or desired by Arkansas.

"The same commendable spirit of co-operation has been manifested by the corporation commission throughout the proceedings in Ex Parte No. 74 and in the present investigation," said Chairman Clark. Continuing on that phase of the subject, Mr. Clark said:

"The desirability of concerted action of the state and federal regulatory bodies in all matters of transportation in which the power of both is involved has been given recognition in the interstate commerce act. The action of respondents in bringing the matter before us in advance of the filing of an application with the corporation commission and a determination by it renders difficult the co-ordinated action contemplated by Congress and deprives us of the benefit of such investigation and findings as the state authorities might have made. However, we are here confronted with practical questions for the solution of which Congress has provided a practical course of procedure by means of which substantial justice is assured. Respondents have elected to pursue that course and we are not vested with appellate power under which they might be remanded to tribunals of the state. But we are authorized to avail ourselves of the co-operation, services, records and facilities of the state in the enforcement of any provision of the act, and we shall reserve for later determination the questions relating to rates on road-building materials. The questions here presented relating to passenger fares are similar in all respects to those presented in Rates, Fares and Charges of N. Y. C. R. R. Co., 59 I. C. C., 290, and Intrastate Rates Within Illinois, 59 I. C. C., 350. The issue with respect to excess-baggage charges is identical with that decided by us in the case first cited."

No evidence was offered in respect of excursion, convention or other multiple fare tickets or baggage charges in connection therewith, extra fares on limited trains, club car charges or other things of that kind, so they have been reserved for future consideration.

## MINNESOTA RATE CASE

*The Traffic World Washington Bureau*

In a report on No. 11771, Minnesota Fares and Charges, the Commission, through Mr. Aitchison, has disposed of the standard passenger fare and excess baggage charge case in Minnesota in the same manner as in the New York, Illinois, Wisconsin and Arkansas cases. The higher fares and excess baggage charges are to become effective February 1. The Minnesota commission had granted everything except the higher passenger fares and excess baggage charges. They were held down by the Minnesota law and a federal injunction forbidding the Minnesota commission to interfere with the three-cent basis prescribed under federal control.

# Tentative Reports of the Commission

## ICING OF CANTALOUPES

A finding of unreasonableness in the rate, an excessive charge for icing in transit on two carloads of cantaloupes from Horatio, Ark., to New Orleans, and an order of reparation have been recommended by Examiner F. E. Early in a tentative report on No. 11551, The Gateway Produce Co. vs. American Railway Express Company and Director-General, as agent. At the time of the movement the legally applicable rate was \$2.06¾. The agent collected \$2.07. There was no provision for icing, but the express company charged \$50 per car. The two cars in question moved on July 30, 1918. On March 30, 1919, the express company, in connection with a general revision of rates in the southwest, made an any-quantity rate of \$1.47 and a carload rate of \$1.14, and an icing charge of \$33 per car. The examiner thinks the reparation should be down to the any-quantity basis, and the \$33 per car basis for the ice.

In defending the higher rate and objecting to reparation to the basis of the carload rate of \$1.14, the express company said the rate of \$1.14 was established on the representation of the complainant that it would have many shipments of contaloupes to make from Horatio. The express company asserted that its predictions about many carload shipmens of melons did not come true. It asserted that the two carloads in question were the only ones that went by express to New Orleans in the three seasons beginning with the one of 1918.

## RATES ON COARSE GRAIN

A proposal has been made by Examiner Paul O. Carter, in a report on No. 11693, Flanley Grain Co. et al. vs. Director-General, as agent, that the Commission hold unreasonable (and order reparation) rates on corn and other coarse grain from stations on the Great Northern in northwest Iowa and southeast Dakota to destinations in northwestern North Dakota between June 25, 1918, and October 31, 1919, to the extent that the rates imposed on coarse grain exceeded those imposed on corn and oats in the same general territory by the terms of General Order No. 28.

When the tariffs ordered by No. 28 went into effect they contained a note reading "Other grain: New wheat rates." The object of the order was to bring the rates on all grain up to the level of the rates on wheat. But northwest Iowa is a corn-growing section. There were no commodity wheat rates in effect on the Great Northern. Therefore the rates that became effective were distance rates, much higher than wheat for similar distances in that part of the country.

More than a year after the event the Railroad Administration put in rates on wheat equal to those in effect prior to June 25, 1918, plus 25 per cent, observing 6 cents as the maximum increase. There were several fourth section departures. Carter thinks there should be reparation both for unreasonable rates and rates in violation of the fourth section.

## BACK HAULING OF COTTON

A scheme for reducing to a minimum back hauling of cotton granted transit for compression has been suggested by Examiner Gartner, in a tentative report on No. 11671, Thomas Cotton Company et al. vs. Illinois Central et al. The complainants are cotton buyers at Cleveland, Como, Holly Springs, and Ruleville, Miss., at which more restrictive transit rules are in force than on other points on the lines of the defendants. There was little or no dispute about the restrictive character of the limitations on transit at the four places. The defendants said, however, that the restrictions were placed with a view to prevent back-hauls. As a rule, there are no restrictions on back-hauling from other compress points on the lines of the defendants. At the four places, however, the limitation is that the outward movement must be in the direction of the initial movement. That is to say, if cotton is sent to any of the points from a place south of them it may not be forwarded to New Orleans for export or for water transportation to New England, except on the payment of the full rate from the compress point to the port.

There are restrictions on the outward movement of compressed cotton in force at some of the other compress points but none so rigid as those in effect at the four points in Mississippi.

Gartner went into the details of the operation of getting cotton to the gins and then to the compress points, pointing out that there must be concentration of grades at given points, if the market is to be expeditiously and economically served. "Compressed cotton saves transportation," said Gartner. Concentration so as to have a larger number of bales of a given grade or grades at one shipping point is a commercial matter entirely.

"If there is to be transit on cotton at all," said Gartner, "and

transit has been in effect for so long and has become so much a part of the transportation of cotton as to be an inherently fixed part of the tariffs as the rates themselves, it must be unlimited as to points of destination to which shipments may be made from the concentration points if there is to be economical concentration.

"The only function of our transportation system in times of peace is to serve the commercial necessities of the nation for transportation. When commercial necessities require a wasteful transportation operation, the waste must be indulged and the particular industry must bear the cost of extra service as nearly as it can be approximated. Back hauling should be eliminated whenever possible, but in connection with the movement of cotton, instead of the tariffs limiting concentration, by limiting transit, they should so state their transit practices that each compress point may and will draw all the cotton from its immediate neighborhood. A charge on a distance basis should then be provided on subsequent movements providing a backhaul."

Gartner said that the rules would provide that no transit be allowed on any shipment involving a back haul which originates more than 75 miles from the compress point at which transit is claimed. He recommends that there be no charge for backhauls under 15 miles; that on hauls of 15 miles and under 25 the charge be 2½ cents; on 35 but over 25 miles, 3½ cents; not exceeding 45 miles, but more than 35, 4 cents, and so on, with a half cent increase for each 10 mile block to 6½ cents for 75 miles.

## RATES ON COTTON

Examiner F. E. Early, in a tentative report on No. 11584, T. W. Keesee & Company vs. Missouri Pacific, and Director-General, recommends dismissal, notwithstanding his conclusion that rates on 1,127 bales of cotton from Marianna and Forrest City, Ark., concentrated at Helena, Ark., and subsequently shipped to New Orleans and Boston rate points, while not shown to have been unreasonable, were unduly prejudicial. He found, also, that the complainants had not been damaged by reason of the undue prejudice and recommended a denial of reparation.

The complainants ask for the privilege of concentration at Helena, cotton from other compress points and reshipping to points belond on the basis of through rates, but Early recommended a denial of that application on the ground that there are compresses at Marianna and Forrest City. The railroad company said that the establishment of concentration privilege at Helena would result in the uneconomical use of equipment through the carriage of uncompressed cotton from Marianna and Forrest City to Helena.

A desire for reparation was the reason for filing the complaint, because, since August 31, 1920, there has been no compression privilege at Memphis, the establishment of which during the railroad administration caused Helena to complain of undue prejudice because Memphis could concentrate cotton from Marianna and Forrest City.

## SOAP RATING IN SOUTHEAST

Assistant Chief Examiner Ulysses Butler, in a tentative report on No. 9297, Procter & Gamble Distributing Co. et al. vs. Alabama Central et al., recommends a holding that the establishment of carload and less-than-carload ratings on soap, made by carriers in the southeast on January 1, 1916, while full of causes for dissatisfaction, and probably some fourth section departures, has been justified by the carriers and should not be disturbed. He said the Commission should require the carriers to remove fourth section departures.

The question was as to whether the destruction of the any-quantity rating was justified. The railroads showed that, while there were only 779 carload ratings in the southeast in 1908, the move in that part of the country has been steadily toward the adoption of the system that prevails in the other traffic districts of the country, and that by 1915 that number had been increased to more than 2,300.

The examiner said the testimony showed that while there have been large increases at some points the burdens on the shippers have not been unduly increased, because there have also been reductions. The complaining soap manufacturers said that the dealers in the southeast were not financially able nor had they the storage space to handle soap in carload quantities, and therefore the effect of the abolition of the any-quantity rating was to force most of the shipments, amounting to a total of 180,000,000 pounds, to a higher L. C. L. basis.

## M. & O. RATES IN TENNESSEE

A recommendation that the Mobile & Ohio be ordered to increase its intrastate rates from Jackson, Tenn., so as to remove an undue prejudice against Corinth, Miss., has been made in a proposed report on No. 11741, Corinth Grocery Company vs. Mobile & Ohio, by Examiner Karl K. Gartner. If adopted, the recommendation will result in a disregard by the railroad company of class and commodity rates established by the railroad commission of Tennessee, on the Commission's judgment that they are unduly low. Thus far Tennessee has never been regarded as one of the states practicing unjust discrimination against interstate commerce by reason of low rates prescribed by its commission.

The complainant in this case is a wholesale grocery company with its chief place of business at Corinth, Miss. It encounters competition from Jackson, Tenn., 57.09 miles to the north. In the complaint the grocery company alleged that it was suffering defeat in the competition on account of the lower rates available to competitors at Jackson.

In the original answer, the railroad company entered a general denial. At the hearing, however, it moved, without objection by the complainant, to amend its answer by admitting the unjust discrimination and undue prejudice, and setting up as a defense that violation of the interstate commerce law was brought about by rates fixed by the Tennessee Railroad Commission, which, it said, were, and are, unduly low.

To illustrate the situation, Gartner said that McNairy, Tenn., is a point almost midway between Corinth and Jackson. It is 27.14 miles south of Jackson and 29.95 miles north of Corinth. On the scale interstate for 30 miles the rate is 50 cents, while on the Tennessee scale it is only 37.5 cents, first class. Most of the complainant's business moves on classes 4, 5 and B. On 4th Class, Jackson has an advantage of 8.5 cents, and on 5th and B classes, Jackson has an advantage of 7.5 and 12.5 cents, respectively.

The complainant made a comparison of the intrastate scales of Kentucky, Tennessee, Mississippi and Alabama, with the interstate scale. Kentucky and Mississippi have a first-class rate for 30 miles of 50.5 cents; Alabama, 49 cents; Tennessee, 37.5, and the interstate scale is 50 cents. It offered testimony showing how the business which it formerly had, when the rates were more nearly on a parity, has fallen off. It did not question the reasonableness of the interstate scale.

"The difference in rates existing between those from Jackson and those from Corinth," Gartner said, "unquestionably is unduly prejudicial to Corinth to the consequent preference of Jackson. And it is equally clear that this undue prejudice results from the intrastate rates applicable from Jackson since the interstate rates applying from Corinth are not out of line with the rates of other carriers or with the intrastate rates of adjoining states. The unescapable conclusion upon this record must be that the intrastate rates applying from Jackson are unreasonably low to the extent they differ from the intrastate scale applied by the defendant."

Gartner said that the Commission should order the undue prejudice removed by increasing the rates from Jackson so that they will not be lower than the corresponding classes from Corinth to points in Tennessee intermediate Corinth to Jackson for similar distances.

## COAL, WYOMING TO MONTANA

Dismissal of the complaint in No. 11600, Gallatin Lumber Company vs. C., B. & Q. et al., is recommended by Examiner F. W. McM. Woodrow, on a proposed finding that rates on coal from Kirby, Wyo., to Greenwood, Mont., and Bozeman Hot Springs, Mont., in July and September, 1918, were not shown to have been unreasonable. This is another of the number of complaints seeking reparation on the theory that the rates charged were unreasonable because the increases prescribed under General Order No. 28 of the Director-General were applied to both factors of combination rates while Freight Rate Authority No. 10 of the Director-General prescribed that the increases should be applied to the total rates. The Commission is holding in these cases that Freight Rate Authority No. 10 is not proof of unreasonableness.

### IMPORTED BLACKSTRAP TO MEMPHIS

A domestic rate of 16½ cents per 100 pounds, applied on shipments of imported blackstrap molasses from Mobile, Ala., and New Orleans, La., to Memphis, Tenn., moving between December 31, 1919, and January 30, 1920, was not unreasonable, Examiner K. K. Gartner proposes that the Commission find in disposing of No. 11647, Memphis Merchants' Exchange et al. vs. Gulf & Ship Island et al. He recommends dismissal of the complaint. The domestic rate was legally applicable because the import rate had been canceled, but the complainant sought reparation down to the lower import rate of 12½ cents, which was restored effective January 30, 1920.

## COAL, KENTUCKY TO JACKSON, MICH.

Holding that the complainant failed to make a case, Examiner Harris Fleming, in a tentative report on No. 11960, Dewey Fuel Co. vs. Cincinnati Northern et al., recommends dismissal of the complaint on a finding that the rate charged on shipments of coal from Kona and other points in Kentucky in Louisville & Nashville Railroad Group No. 1, to Jackson, Mich., was not unreasonable.

The complainant alleged that a rate of $2.20 per ton charged on the shipments involved, which moved during the latter part

of 1918 and the early part of 1919, was unreasonable, unjustly discriminatory and unduly prejudicial to the extent that it exceeded $2.10, and asked reparation.

"The complaint is in reality based solely on the relation existing during the period in question as between the rates to Jackson, on the one hand, and Toledo and certain other points, in the general destination territory, on the other, and the record affords no basis for a finding that the rate assailed was unreasonable," the examiner said. "The complainant does not attack the present rate and offers no testimony to show that the rate charged was excessive, while defendants show that rate, distance considered, compares favorably with rates from other mines to numerous other destinations."

### RATE ON CORUNDUM

A recommendation that the case be dismissed has been made by Examiner Frank E. Mullen in a report on No. 11528, Abrasive Company vs. Grand Trunk of Canada et al. The complainant objected to the sixth class rate on artificial corundum, from Hamilton, Ont., to Bridesburg, Pa., as unreasonable and unjustly discriminatory and unduly preferential to plants of competitors at Worcester and Chester, Mass. The defendants raised the question of the Commission's jurisdiction. By implication, the examiner said that there was no question about the jurisdiction of the Commission as to that part of the transportation in the United States. As to that part, the examiner said, no evidence had been offered. He said the complainant had not shown damage by reason of the lower rate to the plants of its Massachusetts competitors.

### RATES ON ASPHALT

Examiner John T. Money, in a proposed report on No. 11773, Philip Carey Manufacturing Company et al. vs. Alabama & Vicksburg et al., recommends a holding that the rates on asphalt in tank cars, from New Orleans, Baton Rouge and Good Hope, La., to Cincinnati have not been shown to be unreasonable or unduly prejudicial. As to shipments from Meraux, La., to Cincinnati, Money recommended a holding that the rates on asphalt in tank cars, in effect between June 25, 1918, and June 6, 1919, were unreasonable and that reparation should be made to the basis of the present rate, which he said should be held to be not unreasonable or unduly prejudicial. The rates from all the points mentioned, except Meraux, were 25 cents. From Meraux it was 27.5 cents, but since June 6, 1919, the Meraux rate has been the same as the New Orleans rate.

### ALLOWANCE FOR SPOTTING

Assistant Chief Examiner Ulysses Butler, in a tentative report on No. 10311, Downey Ship Building Corporation vs. Staten Island Rapid Transit Railway, Director-General, et al., has recommended dismissal on a holding that the defendants' refusal to switch and spot for the complainant within its plant at Arlington, Staten Island, N. Y., or to make an allowance to the complainant for performing that service with its own facilities, had not been shown to be unreasonable, unjustly discriminatory or unduly prejudicial.

### REPARATION ON OIL

An award of reparation on a finding of unreasonableness has been recommended by Examiner E. L. Beach, in a tentative report on No. 11439, Swift & Co. vs. Director-General, as agent. The complaint was that the rates on carloads of solidified soya-bean oil and peanut oil, in bags, from Atlanta, Ga., to various destinations, was unreasonable because and to the extent that they exceeded the rates on solidified soya-bean and peanut oil in barrels.

### REPARATION RECOMMENDED

In a tentative report on No. 11542, Parkersburg Rig & Reel Company vs. A. T. & S. F. et al., Examiner H. W. Archer has recommended a holding that rates on various shipments of bull wheel arms, cants and pins from Parkersburg, W. Va., to points in Kansas, Oklahoma, Texas and Louisiana were unreasonable to the extent that they exceeded the combination of the sixth class rate east, and the commodity lumber rate west of the Mississippi river, or to the extent that they exceeded the through rates on lumber based on published differentials over St. Louis, where that basis was in effect. He recommends that that basis be prescribed for the future and that reparation be ordered.

### MINIMUM WEIGHT RULE UNREASONABLE

A holding that the minimum carload weight rule on crushed gypsum rock from Gladys, Okla., to Cape Girardeau, Mo., and from Grand Rapids, Mich., to Hannibal and Prospect Hill, Mo., is unreasonable has been made by Examiner H. W. Archer in a proposed report on No. 11619, Acme Cement Plaster Company vs. St. Louis-San Francisco et al., and Sub. No. 1, Same vs. Same. He recommended that it be held that the rule was unreasonable in that it did not and does not provide for the assessment of charges based on the marked capacity of the car, when such marked capacity is less than 60,000 pounds.

### RATES ON COAL

An order directing the removal of undue prejudice has been recommended by Examiner John B. Keeler in a report on No. 11639, Gillespie Coal Company vs. Illinois Traction System et al. The proposed finding is that the B. & O. rates from complainants' mines at Gillespie, Ill., except via St. Louis, to points on defendant's lines are unduly prejudicial to the extent that they exceed or may exceed the rates contemporaneously maintained from mines on the tracks of the defendants in the Springfield group to the same destinations; and that the rates via St. Louis are and for the future will be unduly prejudicial to the extent that they exceed rates from the Belleville group.

### PACKING-HOUSE PRODUCTS RATES

Attorney-Examiner M. A. Pattison, in a tentative report on No. 11620, Swift & Co. et al. vs. Canadian National Railways et al., has recommended dismissal on a finding that rates between Winnipeg, Man., and Edmonton, Alta., and St. Paul, Minn., and points south and east thereof, were not unreasonable, as alleged. The rates under attack were principally those on fresh meats and packing-house products in carloads, eastbound, and miscellaneous articles in L. C. L. quantities, westbound. The allegation was that the Canadian part of the rates should have been increased 25 per cent on those in effect on June 24, without first adding a prior increase of 15 per cent.

### RATE ON MANURE

A holding of unreasonableness and an order of reparation have been recommended by Examiner E. L. Beach in No. 11404, Swift & Co. vs. Director-General, as agent. The proposed finding is that a rate of 12.5 cents on stable manure from Camp Sherman to Parma, O., was unreasonable to the extent that it exceeded 12 cents.

### PETROLEUM AND PRODUCTS

A finding of unreasonableness and an order of reparation have been proposed by Attorney-Examiner W. A. Disque in a report on No. 11371, Emerson-Brantingham Co. et al. vs. A. T. & S. F. et al., as to rates on petroleum and its products from points in Kansas and Oklahoma to Rockford, Ill. He recommended that they be held unreasonable to the extent that they exceeded the rates to Chicago by more than 1½ cents.

## N. DAKOTA RATE DECISION

*The Traffic World Washington Bureau*

The United States Supreme Court, December 20, in No. 55, Minneapolis, St. Paul & Sault Ste. Marie Railway Company vs. Washburn Lignite Coal Company, in which the carrier sought to collect charges on coal shipments in excess of what was demanded and paid at time of movement, held that the carrier was not entitled to a review of the judgment of the Supreme Court of North Dakota, which held against the carrier.

In the opinion, written by Mr. Justice Van Devanter, it is set forth that the action was brought by the railroad company against a shipper for whom it had carried many carloads of coal between points in the state of North Dakota to recover for that service a compensation in addition to what was demanded and paid when the service was rendered.

The judgment went against the carrier in the lower state court and also in the Supreme Court of the state and the writ of error was sued out on the theory that the judgment upheld and gave effect to a local rate statute which the carrier was contending was repugnant to the due process of law clause of the 14th amendment.

"If this theory is not right," Justice Van Devanter said, "the writ of error must be dismissed, for it is without other support."

A history of the rate situation which caused the litigation is given in the opinion. It appears that in 1907 the North Dakota legislature prescribed a schedule of maximum rates for carrying coal in carload lots between points in the state. The Minneapolis, St. Paul & Sault Ste. Marie and other carriers refused to put the rates into effect and the state instituted injunction proceedings to compel obedience. The carriers defended on the ground that the rates were confiscatory. The court sustained the schedules and issued the injunctions prayed for by the state. The carriers brought the cases to the United States Supreme Court on writs of error and it affirmed the judgments but did so without prejudice to the rights of the carriers to reopen the cases if an adequate trial of the schedules in the future enabled them to prove them confiscatory. After trying the schedules for a year or so, the carriers presented petitions in the state court which had sustained the schedules, seeking a ruling against the schedules. The state court ruled against the carriers who then appealed to the United States Supreme Court, which reversed the judgments of the state court on the ground that the carriers had established that the rates were not sufficiently remunerative.

On order of the United States Supreme Court the state court set aside its judgments and dismissed the cases.

The shipments on which the additional compensation was sought were made when the injunctions issued by the state court were in effect. The shipper paid the maximum rate demanded, the court says, and the carrier did not protest that it was entitled to more. There was no provision or stipulation involved in the injunction proceedings protecting the right of the carrier to collect more if the rates attacked were later held insufficient.

"The opinion rendered by that court (the state court) shows that it did not uphold or give effect to the statutory rates as such, but rested its decision on other independent grounds which appeared to it to preclude a recovery by the carrier," Justice Van Devanter said in conclusion.

A companion case to the preceding was disposed of in the same manner by Justice Van Devanter. It was No. 15, Minneapolis, St. Paul & Sault Ste. Marie Railway Co. vs. C. L. Merrick Co. The writ of error was dismissed.

# ACT APPLIES FROM FOREIGN COUNTRY

(U. S. Supreme Court Decision—See Traffic World, Dec. 18, p. 1180)

No. 100—October Term, 1920.

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| Galveston, Harrisburg & San Antonio Ry. Company, Petitioner, vs. L. H. Woodbury and Vincent Woodbury. | On Writ of Certiorari to the Court of Civil Appeals for the Eighth Supreme Judicial District, State of Texas. |

[December 13, 1920]

Mr. Justice Brandeis delivered the opinion of the Court.

On March 14, 1917, Mrs. Woodbury took the Galveston, Harrisburg and San Antonio Railway at San Antonio, Texas, for El Paso, Texas, and checked her trunk, which she took with her. It was lost and she sued the company in a state district court for the value of trunk and contents, which the jury found to be $500. Mrs. Woodbury was traveling on a coupon ticket purchased at Timmins, Ontario, from a Canadian railroad, entitling her to travel over it and connecting lines from Timmins to El Paso and return, apparently with stop-over privileges. When the trunk was lost she was on her journey out. She was not told when she purchased her ticket or when she checked her trunk that there was any limitation upon the amount of the carrier's liability. It did not appear whether the ticket purchased contained notice of any such limitation, nor did it appear what was the law of Canada in this respect. The company insisted that Mrs. Woodbury was on an interstate journey; and that under the Act to Regulate Commerce, February 4, 1887, c. 104, 24 Stat. 379, as amended it was not liable for more than $100; since it had duly filed with the Interstate Commerce Commission and published a tariff limiting to that amount unless the passenger declared a higher value and paid excess charges, which Mrs. Woodbury had not done. She insisted that her transportation was not subject to the Act to Regulate Commerce, because it began in a foreign country; and that the liability was governed by the law of Canada, which should in the absence of evidence be assumed to be like the law of Texas, the forum; and that by the law of Texas the limitation of liability was invalid. The trial court held that she was entitled to recover only $100, and entered judgment for that amount. This judgment was reversed by the Court of Civil Appeals, which entered judgment for Mrs. Woodbury in the sum of $500. Tex. Civ. . . The case came here on writ of certiorari, 250 U. S. 637. The only question before us is the amount of damages recoverable.

If Mrs. Woodbury's journey had started in New York instead of across the border in Canada, the provision in the published tariff would clearly have limited the liability of the carrier to $100. For her journey would have been interstate although the particular stage of it on which the trunk was lost lay wholly within the State of Texas. Compare Texas and New Orleans Railroad Co. vs. Sabine Tramway Co., 227 U. S. 111. And the Carmack Amendment under which carriers may limit liability by published tariff applies to the baggage of a passenger carried in interstate commerce, Boston & Maine Railroad Co. vs. Hooker, 233 U. S. 97; although it does not deal with liability for personal injuries suffered by the passenger. Chicago, Rock Island & Pacific Railway Co. vs. Maucher, 248 U. S. 359. The subsequent legislation, the Cummins Amendment, Act of March 4, 1915, c. 176, 38 Stat. 1196, as amended by the Act of August 9, 1916, c. 301, 39 Stat. 441, has not altered the rules regarding liability for baggage.

But counsel for Mrs. Woodbury insists that solely because her journey originated in Canada the provisions of the Act to Regulate Commerce do not apply. The contention is that Section one of the Act of 1887 does not apply to the transportation of passengers from a foreign country to a point in the United States. To this there are two answers. The first is that the transportation here in question is not that of a passenger but of property. Boston & Maine Railroad vs. Hooker, supra. The second is that the Act does apply to the transportation of both passengers and property from an adjacent foreign country, such as Canada. Section one declares that the Act applies to "any common carrier . . engaged in the transportation of passengers or property . . . from any place in the United States to an adjacent foreign country." A carrier engaged in transportation by rail to an adjacent foreign country is, at least ordinarily, engaged in transportation also from that country to the United States. The test of the application of the act is not the direction of the movement, but the nature of the transportation as determined by the field of the carriers' operation. This is the construction placed upon the act by the Interstate Commerce Commission, International Paper Co. vs. D. & H. Co., 33 I. C. C. 270, 273, citing T. & P. Ry. Co. vs. I. C. C., 162 U. S. 197. It is in harmony with that placed upon the words of section 1 of the Harter Act, February 13, 1893, c. 105, 27 Stat. 445, "any vessel transporting merchandise or property from or between ports of the United States and foreign ports," which in Knott vs. Botany Mills, 179 U. S. 69, 75, were construed to include vessels bringing cargoes from foreign ports to the United States. There is a later clause in Section one which deals specifically with the transportation of property to or from foreign countries; but cases arising under that clause are not applicable here. That clause applies where the foreign country is not adjacent to the United States. The case which holds that the Act does not govern shipments from a foreign country is bond through the United States to another place in a foreign country, whether adjacent or not are also not in point. Compare United States vs. Philadelphia & Reading Ry. Co., 188 Fed. 484; In the Matter of Bills of Lading, 52 I. C. C. 671, 726-729; M. Canales vs. Galveston, Harrisburg & San Antonio Railway Co., 37 I. C. C. 573.

Since the transportation here in question was subject to the Act to Regulate Commerce, both carrier and passenger were bound by the provisions of the published tariffs. As these limited the recovery for baggage carried to $100, in the absence of a declaration of higher value and the payment of an excess charge, and no such declaration was made and excess paid, that sum only was recoverable.

Reversed.

# TRANSPORTATION OF EXPLOSIVES

*The Traffic World Washington Bureau*

The legislation regarding the transportation of explosives urged by the Commissoin in its annual report, as embodied in H. R. 12161, was approved by the House, December 20, the bill being passed without a roll call and with brief debate. The measure goes to the Senate.

"This bill relates exclusively to amendments to the existing law with reference to the transportation of explosives," said Representative Merritt, of the House committee on interstate and foreign commerce. "This bill is, in fact, suggested by the Interstate Commerce Commission and approved by the carriers and shippers. The amendments are very slight in character, made with the idea of clarifying existing law, also providing for conditions which have arisen during the war. The bill as originally passed in 1909 had to do with explosives, but since the war there have been made a great many dangerous gases and other chemicals which, while they come within the spirit of the law, may perhaps not come within its letter. There are also amendments designed to clarify certain doubts, as, for example, whether a vehicle means a railroad car or not. There are also certain verbal changes to distinguish between f-u-s-e-s, and f-u-z-e-s, and f-u-s-e-e-s. The value of this legislation may, perhaps, be understood by one or two simple but striking instances. During the year 1918 Mr. Clark, of the Interstate Commerce Commission, testified there were on the average on the tracks of the United States 50,000 cars loaded with war explosives, and in addition there were 5,000 cars transporting commercial explosives. These regulations were so effective that during that whole year not a single life was lost through these cars, and only about $30,000 worth of damage done to property. During that same year, however, there were a number of accidents, to a total of 739, due to acids, corrosive liquids, gasoline, alcohol and charcoal, while the property damage ran into hundreds of thousands of dollars. I mention that only to show the importance of this legislation.

"The only changes in the law are those that I have indicated, and also one provision shown on page 1 of the bill, which gives the Interstate Commerce Commission the right to utilize the services of the bureau for the safe transportation of explosives and other dangerous articles, and to avail itself of the advice and assistance of any department, commission, or board of the government; but provision is made that no official or employe of the United States shall receive any additional compensation for such services, except as now provided by law. There is no new expenditure involved."

The bureau referred to by Mr. Merritt is that established by the American Railway Association. The bill authorizes the Commission to establish regulations for the safe transportation of explosives and other dangerous articles. The bill would also require a written statement by the shipper as to the character of the explosive or dangerous article to be shipped. Representative Esch said the purpose in that connection was to require the description entered in writing on the bill of lading.

## NEW ENGLAND DIVISION CASE

*The Traffic World Washington Bureau*

In a short cross examination of President McDonald of the Maine Central, in the New England investigation, Dec. 16, attorneys for the trunk lines asked him if it was accurate to say there had been some kind of division agreed on by the New England roads of the money they hoped to obtain from the trunk lines. Mr. McDonald admitted there had been some discussion of the matter and that it was practically agreed that the division of the expected addition to the revenues of the New England carriers could not be made on a mileage basis, else the Maine Central would hardly obtain enough to make the matter worth while.

Percy Todd, president of the Bangor & Aroostook, who took the stand at the afternoon session was also asked a few questions on the subject of anticipated additions to revenue by reason of the proceeding before the Commission. He estimated that if the complaining carriers obtained the $25,000,000 which they insist will accrue to the whole body of eastern carriers by reason of the inclusion of the property value of the New England roads in the total representing the eastern carriers, the Bangor & Aroostook will be entitled to between $900,000 and $1,000,000. Former Judge Walter Noyes, one of the attorneys for the trunk lines, asked for an explanation as to how the conclusion stated by Mr. Todd was reached by him but Mr. Todd said he was not in position to afford any illumination on that point. He said that other witnesses would take up that phase of the subject and afford information. Mr. Noyes said he would reserve his examination on that point until the other witnesses took the stand.

George H. Eaton, assistant freight traffic manager for the Boston & Maine, submitted exhibits of production of various heavy loading commodities to show that New England is not a producer of such heavy-loading traffic and must therefore depend upon divisions on such desirable traffic to give them compensation for the services they do perform.

The advances made by the Anderson scale, he said, did not inure to the benefit of the New England carriers because local rates, in many places, were held down by overhead rates from other territories. He showed maps to indicate the low spots in the two zones of Anderson scale rates. The low spots are so numerous that there are few points in New England, where any considerable tonnage originates or has its final destination, that are not in an area where the rates are not considerably below the Anderson scale. He showed places where the first class rate is as much as 12 and 9.5 cents below the level permitted by the Anderson scale. Such situations, he said, were beyond the control of the New England carriers. He said he had not made a computation tending to show how much money the Boston & Maine had been deprived of by the depressions.

Assistant Freight Traffic Manager G. H. Eaton, of the Boston & Maine, December 17 continued his analysis of what he called the sub-normal spots in the New England rate structure, where, for reasons over which the Boston & Maine had no control, rates below the Anderson scale were forced on it and other roads similarly situated. His collection of exhibits to back up contentions made by Wilbur LaRoe, Jr., attorney for the complaining carriers, in charge of the examination of the witnesses on the traffic part of the case, was exceedingly large. Up to noon of December 17 he had gone over 45 of his exhibits, each consisting of a large number of large pages on which millions of figures were massed.

Two of the contentions made by LaRoe were that the complaining carriers, out of the joint rates to and from the western termini of trunk lines, receive, as divisions, much less than the rates named in the Anderson scale. Specifically confining the figures to the Boston & Maine, he picked out business from Boston to St. Louis and Chicago, on which, he said, the Boston & Maine received from 32 to 33⅓ per cent of the Anderson scale, while the lines west of the Hudson received from 83 to 84 per cent of their local rates. Comparisons of traffic via Newport and Rotterdam to various destinations were submitted to show that, if local rates are reasonable measures of divisions, the Boston & Maine received much less than reasonable, the New England road receiving from 28 to 37 per cent of the locals it would have received were the Anderson scale in effect, while the lines west of the river received from 75 to 97 per cent of their locals. The Boston & Maine received much less than its mileage pro rate on a large amount of business.

As to divisions out of transcontinental rates, Mr. LaRoe said the contention was that the divisions were particularly unfair. Mr. Eaton said that out of the rate on apples from north coast Pacific points to New England the New England division was two cents less than a straight mileage pro rate, the division to the trunk lines 8.75 cents less than a pro rate and the share to the transcontinental lines 10.9 cents more. On canned fruits the New England division is 3.4 cents less, the trunk line 13.4 and the transcontinental more than 10 cents above a pro rate. On canned salmon, the New England division is 3 cents less, the trunk line 6 cents less, and the transcontinental 7.6 cents more.

Mr. LaRoe asked the witness to pick out only a few of the facts to show the character of the exhibit. Chairman Clark asked why the divisions to points on the old Fitchburg road were less. Mr. Eaton thought the low divisions were the result of competition.

Detailed expositions of the conditions of New England carriers other than those treated earlier in the New England investigation were put into the record on the afternoon of December 17 and the sessions of the following day, with a general view of the situation by Howard Elliott, chairman of the Northern Pacific and director of the New Haven. He was brought into the case because in 1913 he was called to the New Haven with a view to having him pull it out of its bad situation. His view was that the efforts put forth while he was head of the New Haven had begun showing fruits indicating a restoration of the New Haven to an easy self-supporting if not dividend-paying basis by the time government control came along.

Mr. Elliott did not place the blame for the present condition on government control, but the cumulative effect of the wage basis put in during government control, the Adamson law, the extremely high cost of fuel and materials, he indicated, produced the condition with which he thinks the Commission should deal.

"I for one am sorry that we could not work out a settlement of the question, without bringing it to this overworked Commission," said Mr. Elliott, having reference to the conferences of the executives in which efforts were made, prior to the beginning of the formal hearings, to find a basis of settlement between the roads east and west of the Hudson.

At the afternoon session of December 17, Presidents E. J. Pearson of the New Haven, J. H. Hustis of the Boston & Maine, and E. C. Smith of the Central of Vermont made a presentation of the facts with respect to the properties under their care, as the executives of other roads had done for the properties in their care at earlier sessions. Vice-President Buckland of the New Haven was put on the stand for a short time to tell of the borrowings the New Haven had made from the government, amounting, in round figures, to about $66,000,000.

One of the striking facts brought out by Mr. Pearson was that out of the local business the New Haven earns a car-mile of 6 cents; on New England inter-line, 4 cents; and out of divisions with roads west of the Hudson only 1.5 cents.

Treating the matter as presenting a national and a New England phase, Mr. Elliott said that the hard conditions of operation in New England found by him when, at the solicitation of friends in Boston, New York and Philadelphia he took hold of the New Haven with a desire to perform a public service, have been intensified by the war and after the war developments.

"It is a national matter, it seems to me, and we have got to bear a share," said he. "New England roads need a good deal of attention. I think they are managed with absolute honesty, economy and efficiency. Great strides have been made in the use of tracks and cars to obtain the maximum use of each. Mr. Pearson was selected because of his expertness in operation of tracks and equipment. Operation in New England, I think, is as efficient as any in the country, except possibly west of the Mississippi, where the effect of the war was less felt than in other parts of the country.

"New England contains one-thirteenth of the population of the country and consumes one-eighth of the raw materials. It ought to be well served in transportation. There is a value there equal if not greater than the book value, and it is entitled to the benefits of the protective measure passed by Congress. It seems inconceivable that under this law (transportation act) some way should not be found for solving this problem, both for the sake of New England and the whole country.

"Insolvency of one or more of the New England roads would be a calamity, not only for New England, but for the whole country, because it would raise the question among investors in the securities of other roads, whether it was worth while for them to extend the paper issued by them. Yet insolvency stares the New England roads in the face. In the three years coming $526,000,000 of securities fall due; $334,000,000 next year; $86,000,000 in 1922 and $106,000,000 in 1923. The sustaining of the credit of railroads as a whole, it seems to me, makes it important to try to save this situation.

"While another war seems a remote contingency, the question of national defense is not to be overlooked. New England is the place where the allies and the United States obtained a very large part of the materials they considered necessary in making war."

In dealing with the condition of the New Haven itself, Mr. Elliott remarked that labor on that road has fared much better than capital in the seven years since he became the head of the property. He said the stockholders had been forced to forego at least $60,0000,000 of dividends, but labor had not been under the necessity of giving up anything. On the contrary, he said, the latter has improved its situation. He said the change in the wage basis for station employes and interior junctions placed a much heavier burden on the New England roads than on the roads west of the Hudson.

"Centralized control," said Mr. Elliott, "entirely changed the task of the directors of the New Haven. What they did

prior to the advent of government control had begun showing fruits, but the change in the wage basis, increasing costs of materials and fuel, and the Adamson law have produced a condition where the road is no longer self-supporting. Conditions are not the same now as they were when the present divisions were agreed upon. Some of the divisions were agreed upon forty years ago. While I was not railroading forty years ago I know there have been great changes in the last twenty years and there should be a revision."

Clyde Brown, attorney for the New York Central, on cross-examination caused Mr. Elliott to admit frankly that if the monthly deficit of the New Haven is $2,000,000, the relief it might obtain from a grant of the maximum of divisions suggested by the New England roads, $25,000,000, would not give the New Haven enough to clear its difficulties. But he added the monthly deficit is not $2,000,000 a month, and every little improvement in the revenues is a help toward the day when the road will again be self-supporting. He added that everything that could be done by the New England carriers to improve their condition should be done, including increases in their local rates. That, however, he said, raised the question whether they could be made any higher without loss of business. Trucks, he said, have taken business from the railroads and the question of higher rates was bound up with the question whether there could be higher charges without great losses of business.

George T. Jarvis, vice-president and general manager of the Rutland Railroad, provided the same kind of statistics for that road that was put into the record for other roads by their executives.

The New England side of the case was closed, so far as facts on the direct examination are concerned, at the afternoon session of December 18, with the testimony of George S. Hobbs, vice-president of the Maine Central, and John L. Dempsey, assistant general freight agent of the Central of Vermont. Mr. Hobbs, among his statistics, showed that the item of wages for the Maine Central increased from $6,300,000 in 1917 to $15,300,000 in 1920.

Chairman Clark, just before the close of the testimony, gave the witnesses and the attorneys an indication of what may be in the minds of the commissioners by asking Mr. Hobbs how, if he had the power, he would revise the divisions. In other words, how he would advise the Commission to undertake the work.

Mr. Hobbs' first suggestion, made in connection with divisions of transcontinental rates, was that the proportion allowed to the lines east of Chicago and the other western gateways should be increased. In that way, he said, the divisions accruing to the New England lines would be increased. Chairman Clark suggested that that might not follow inasmuch as many of the transcontinental rates are blanketed at the eastern end and the rate is the same whether the traffic stops at New York or Portland, Me. Mr. Hobbs said that it might be necessary to add arbitraries to some of them so that in effect the rates would not be blanketed throughout the east.

As a general proposition he said the New England lines should be given a terminal arbitrary of 1.75 cents per 100 pounds on coal and some other commodities grouped with it; 2.5 cents on grain, pig iron and commodities grouped with them and 5.5 cents on all others.

Chairman Clark said that he admitted that, as a proposition to be agreed upon by the executives of the roads concerned, that probably presented a feasible method of disposing of the matter, but he inquired under what law the Commission, as a measure of temporary relief, such as the New England petitioners suggested, could do that. Mr. Hobbs said he was not a lawyer, but he wanted to know whether the Commission could not appoint a committee, with a chairman having power, to work out a plan of terminal arbitraries of the quantities suggested.

"But where's the law authorizing us to do that?" persisted Mr. Clark. Mr. Hobbs could not give any reference. Thereupon Mr. Clark suggested that the attorneys could give the answer in the briefs they will have to file in the case in the event the executives do not agree upon a method for affording relief for the complaining roads.

## CAR SUPPLY SITUATION

*The Traffic World Washington Bureau*

A general easing up of the car supply situation occurred in the two-week period ending December 14, according to the semi-monthly bulletin of the car service division of the American Railway Association. (See Traffic World, December 18.)

The bulletin also showed the percentages of freight cars on line to ownership as of December 1, Class I roads, to be as follows by districts: Eastern district, 94.6 as against 98.3 a year ago; Allegheny district, 97.8 as against 95.9 a year ago; Pocahontas district, 78.6 as against 83.6 a year ago; Southern district, 91.7 as against 94.9 a year ago; Western district, 102.9 as against 105.9 a year ago; all districts, 97.1 as against 99.4 a year ago; Canadian roads, 99.3 as against 94.2 a year ago.

The summary of general conditions follows:

"Box Cars: There is some improvement in grain loading in the West. All requirements for box cars for ordinary loading are being fully protected. Cars are reaching home roads in substantial volume.

"Auto Cars: Surplus automobile cars should be disposed of according to car service rules. Preference should be given to loading that will take the cars into auto-manufacturing territory, care being taken to avoid loading them with cement, flour or other commodities that leave a residue that will damage the finish of automobiles when the cars are later used for that loading.

"Stock Cars: While there has been some decrease in the demand for stock cars generally, there has been some shortage at Chicago of double deck cars.

"Refrigerator Cars: Demand continues for refrigerator cars generally throughout eastern, as well as western, territory for movement of apples, vegetables, canned goods, and other perishable freight. Citrus fruit in considerable volume is being offered for movement from Florida and California. It is important that refrigerator cars be handled promptly.

"Open Top Cars: During the first half of December a general improvement in the open top car situation can be reported as compared to previous months. It is estimated the weekly production of bituminous coal in this period will reach an average of 12,750,000 tons, which is the best average attained during the present year, notwithstanding the fact that preferential car supply for coal, provided for in Service Order 20, was withdrawn on November 29. One reason for this favorable showing may be the fact that there has been a falling off in transportation demands of commodities other than coal as a natural result of the country-wide industrial slump. In spite of the substantial increase shown in the coal production figures, several of the larger coal loading roads still continue to report inability to secure sufficient cars; in fact, on some of these lines the situation is represented as nothing short of serious. It is, therefore, evident that the peak of the production possibilities has not as yet been reached, although it is the general consensus of opinion that the country is entering the cold weather months with adequate fuel stocks.

"Flat Cars: The demand for this particular type of equipment at this time would indicate that the carriers have sufficient supply generallyto protect their requirements. All railroads should continue their efforts to move this particular type of equipment to owning lines promptly in accordance with car service rules."

## RATES ON ORE

*The Traffic World Washington Bureau*

The complaint of the Adriatic Mining Company and other iron ore producers against the Chicago & North Western and other carriers that transport ore from the upper lake mines to the docks, to which reference was made in the Traffic World of December 18, is intended as an attack on the iron ore rate structure on the theory that that adjustment favors the United States Steel Corporation, which controls two of the ten ore-carrying roads. Jean Paul Muller, who prepared it, has represented so-called independent iron and steel companies in other rate matters, making his attacks on studies of traffic and economic conditions to show that the trunk lines have discriminated against his clients.

Sixty million tons of iron ore are produced in the upper lake region. It is claimed that the eighty-odd complainants in this case produce 27,000,000 tons. A further claim is that the two United States Steel Corporation roads haul more than half the production, so that in any rate adjustment that yields more than 6 per cent on the value of the property devoted to transportation, the excess, it is claimed, is tantamount to a rebate to the United States Steel Corporation.

In that aspect, the case has the appearance of the fundamental question in many of the industrial railway and tap line cases.

Speaking of the rates now in effect, the complainants averred they "are the result of successive increases published since the Commission passed on the reasonableness thereof in I. C. C. No. 5669, 33 I. C. C. 646-47, and No. 5370, 33 I. C. C. 557, and that these increases were made by the carriers while under control of the federal government, during the stress of the necessities of war as temporary emergency measures, to enable the federal government to secure immediately an increased revenue for war purposes from an industry whose aggregate tonnage was of large volume moving in a comparatively restricted area which movement, during the war period, would not be hindered by such increase, which would be withdrawn as soon as a general adjustment could be secured, as testified by carriers' witnesses in the Fifteen Per Cent Increase case, and that these increases therefore admittedly resulted in unjust and unreasonable rates in violation of the interstate commerce act, and section 1(5) thereof."

# NEW YORK INTRASTATE RATES

*The Traffic World Washington Bureau*

In a bulletin to state commissions covering the intrastate rate situation in New York, December 18, John E. Benton, general solicitor of the National Association of Railway and Utilities Commission, said:

"New York Passenger Fare Case.—The injunctions granted by the Supreme Court of New York against carriers operating in that state, restraining them from advancing intrastate rates in conformity with the order of the federal commission, have been continued, after arguments, pending final decision. I learn from the press that carriers have now made a motion that the state be required to file a bond to idemnify the carriers in the event that the rates prescribed by the Interstate Commerce Commission are finally upheld, and that this motion has been taken under consideration.

"The Lehigh, Erie, and certain other roads were not served with the injunction granted within the time limited therein, and put the advanced rates ordered by the federal commission into effect. An extension of time within which to serve the injunction has been granted by the state court, but in the meantime these particular carriers have commenced an action in the United States District Court in New York to restrain the state authorities from further proceeding to enforce the state rates.

"New York Two-Cent Fare Case.—In the mandamus proceeding brought by the New York Public Service Commission (Second District) against the New York Central, to compel the latter to put into effect the two-cent rate between Albany and Buffalo, prescribed by the charter of the New York Central, the New York Court of Appeals has sustained the order of the Appellate Division of the Supreme Court in favor of the commission. As soon as I can obtain a copy of the opinion of the court I shall reproduce the same and distribute it to all commissions. From such information as I have, I understand that the Court of Appeals holds that the effect of Section 208a of the Transportation Act was to continue in effect all rates, both federal and state, until changed by state or federal authority. Such change could only take place by affirmative action. In the case of state rates, reductions prior to September 1 must be with the consent of the federal commission, but after that date might be required without such assent. The franchise fare accordingly was not automatically revived on September 1, but the order of the New York Commission directing the carriers to put the same into effect on September 1, operated to revive the fare on that date.

"By stipulation of the parties the recent report and order of the federal commission, prescribing intrastate passenger fares in New York, and the evidence upon which the order was made, were before the court. The court said, however, in substance, that the question whether the order was justified by the present provisions of the Interstate Commerce Act and the decisions of the United States Supreme Court, and the question whether in making it the Commission acted in a quasi-judicial capacity, or purely as a branch of the legislature, and whether, if it acted in such quasi-judicial capacity, its determination that facts existed upon which its jurisdiction depends might be attacked collaterally were questions which had not been argued in the Court of Appeals nor considered at all in the Supreme Court. No opinion on these questions was expressed. The order of the Supreme Court, directing the mandamus writ to issue, was affirmed with costs, but the case was remanded with the right on the part of carriers or other parties to introduce in the Supreme Court the report, order and evidence on which granted, and any other proper matter. Accordingly it may be expected that the case will be heard again before a single justice, and finally make its way a second time to the Court of Appeals."

Copies of the decision of the Court of Appeals of the state of New York in the case of the Public Service Commission, Second District, New York, against the New York Central, in which the court affirmed the order of the state commission requiring obedience of the charter provision fixing a 2-cent passenger fare between Albany and Buffalo, New York, have been distributed to the state commissions by Mr. Benton.

Mr. Benton, in a bulletin under date of December 20, also reviewed the situation with respect to the New York passenger fare case as follows:

"In the litigation begun by the state of New York in the Supreme Court of that state, wherein injunctions were granted restraining carriers from collection of the advanced fares ordered by the Interstate Commerce Commission, on the 18th instant, Judge Hasbrouck, of that court, sitting in special session, dissolved the injunction which had been granted in the Second District case, so far as it related to trunk lines. On other lines the injunction was permitted to remain in effect. This information was obtained from a newspaper report yesterday, which was in part as follows: 'The court held that trunk lines are emphatically interstate commerce carrying lines.' I immediately wired Judge Hale, Counsel for the Second District Commission, requesting a copy of the opinion filed on the partial dissolution of the injunction, so that I might distribute the same. His reply, just received, advises that no opinion was filed. We are, accordingly, left to speculate as to the ground upon which the partial dissolution was made. At the hearing as to continuance of the temporary injunction, to which I referred in said bulletin of December 17, the case was substantially tried before Judge Hasbrouck. He had before him the order and report in the proceeding wherein the advanced fares were ordered by the federal commission, and the evidence upon which that Commission acted."

The opinion of the New York Court of Appeals follows:

"By its charter and by section 57 of the Railroad Law (Cons. Laws, ch. 49), the rate of way passengers on the New York Central Railroad between Albany and Buffalo is limited to two cents a mile. Because of the Transportation Act of 1920 the company exacts and claims the right to exact a greater sum. After a hearing, on June 15, 1920, the public service commission directed the defendant to restore the two-cent rate on and after September 1, 1920. The latter refused to comply with this order and proceedings were instituted in the Supreme Court by the commission to obtain relief. These proceedings are now before us for review.

"On December 28, 1917, under authority of an act of congress the president entered into 'possession, use, control and operation' of the New York Central Railroad and later fixed a rate of fare upon that road, for all passengers, at three cents a mile. This action was not justified by any of the ordinary rules of law. It can be sustained solely as the exercise of the war powers of the United States. And these powers are not limited by these ordinary rules. They are not bounded by any specific grant of authority. They are not unlike what in the states we call the police power, but the police power raised to the highest degree. They are such powers as are essential to preserve the very life of the nation itself. When requisite to this end the liberty of the citizen—the protection of private property—the peace-time rights of the states must all yield to necessity.

"That the Federal Control Act was a proper exercise of these powers—that as incident to the control of the roads, the question of fares intra as well as interstate, was lodged exclusively in the President, has been held by the Supreme Court. (Northern Pacific R. R. Co. vs. Dakota, 250 U. S. 135.) The owners, however, did not lose their property. Their rights over it were suspended. And so as to the states. Any regulations they might have made as to the operation of the roads; any powers they possessed over intrastate traffic; any contract obligations vested in them, were merely suspended while the general government was in possession.

"The time came when the necessity—the basis of the war power—ceased. The roads were to be returned to their owners, the states were once more to exercise their accustomed authority. Yet the process of readjustment was complex. And the power to seize the roads carried with it such reasonable power as was needed to bring about that readjustment in an orderly and equitable manner. The government had operated competing roads as part of one system. It had distributed cars as its needs required. It had increased the wages of employes. It had fixed the rates of fare, both interstate and intrastate. The public good required that the normal state of affairs should be reestablished with the least possible disturbance. Congress was well within its rights, therefore, when it provided that the tariffs in force on February 29, 1920, should continue until thereafter changed by state or federal authority, respectively, or pursuant to authority of law, and in no case should be reduced before September 1, 1920, without the approval of the Interstate Commerce Commission.

"Obviously the purpose of this clause, so far as the states were concerned, was to maintain fares until September first and thereafter until, in view of possible new conditions, affirmative action was taken by the state authorities. The thought was that in many instances local rates had been fixed by local commissions with a view to costs and earnings as they existed prior to 1917. Let them act if they desired to restore the old rates. It is equally obvious that when such action was taken is immaterial if the actual reduction did not take effect until September first. In a case like that of the defendant, where the rate is a condition of the charter, or in a case where the rate is fixed by statute, there would seem to be less purpose in such a provision. Possibly it seemed wise in all cases to give the roads formal warning of reversion to the old state of affairs and an opportunity to make and file the necessary tariff schedules. In any event, Congress made no exception to the general rule.

"Therefore, the New York Central Railroad Company might continue existing rates until some change was required by the state or federal authorities or pursuant to authority of law; or, as we construe the language as it affects New York, by the action of the Interstate Commerce Commission, or the public service commission, within the limits of their respective powers, or by the action of some body having jurisdiction over the railroad and the subject-matter of rates. Such action, however, has now been taken. As we have said, the obligation of the defendant to carry way passengers for two cents a mile has not been destroyed. It was temporarily superseded. It was always sub-

ject to this possibility under the war power, if it became necessary. But when the suspension ceases, it revives with all its original force. The suspension does cease, in the language of the statute, when the three-cent rate is "changed by state authority." That authority over intrastate rates is the public service commission. Any charge made by a public service corporation in excess of that allowed by law is prohibited (Public Service Commissions Law, Sec. 26). And if the commissioners shall after a hearing be of the opinion that any fare demanded is in violation of any provisions of law, it may determine the proper fare to be thereafter charged (Sec. 49). This is precisely what the commission has done. True, the defendant hitherto was authorized to charge three cents a mile for local fares between Albany and Buffalo. In a sense that fare "was allowed by law"; but the law our statute refers to is our law still in existence, having all its ancient force when the war powers of the United States cease. And they do cease when our commission acts.

"The Special Term, therefore, should have granted appropriate relief to the respondent, and we should now affirm the action of the Appellate Division, unless we are to be controlled by a further consideration. By stipulation there have been placed before us an order made on November 13, 1920, by the Interstate Commerce Commission directing the New York Central and other railroads to desist from practicing undue discrimination against interstate and foreign commerce, found to exist, and to exact fares for intrastate traffic equal to fares established by the Commission for interstate traffic; the opinion and findings of the Commission on which this order was based, and the evidence taken before it. Although no statement is made as to the purpose of these papers, probably the theory of the appellant is that this order supersedes all prior orders made by the plaintiff, and even if the order of the Appellate Division was right at the time it was made, we should not now affirm it, and so in effect direct the defendant to do what is no longer in its power.

"These papers were not and could not have been considered by the courts whose orders we review. They were not in existence when they acted. The question arises, how far we should make them a basis for deciding various questions.

The New York Central Railroad Company is engaged in interstate as well as in intrastate commerce. To the Interstate Commerce Commission is rightfully confided the question of interstate fares and tariffs. Primarily and independent of any other consideration, it has not and it cannot have any control over intrastate fares as such. That is a matter for the state authorities. Except under the war powers of the United States any attempt to vest in it jurisdiction over what are solely and exclusively intrastate rates would fail. It may be that under the guise of fixing such rates the state may not discriminate against interstate commerce. To permit it would make the state supreme over all traffic. It would nullify the power over interstate commerce confided by the constitution to the national government. If such discrimination exists in fact, the Commission may have the power to correct the evil, even if to effect the result it requires a state rate to be so raised as to equal the rates fixed by it for the like interstate service (Houston & T. Ry. vs. U. S., 234 U. S. 342; Transportation Act of 1920, Sec. 416).

"The Interstate Commerce Commission has found that as regards intrastate rates in New York undue discrimination against interstate commerce does exist. From their opinion it may be argued that this finding is based in part, at least, upon the theory that it may establish a scale of intrastate rates sufficiently high to enable the carrier to earn a fair return upon combined inter and intrastate business.

"The authority of the Commission as now exercised has been widely questioned. Yet whether its action was justified by such a decision as Houston & T. Rwy. Co. vs. U. S. (234 U. S. 342) or by section 416 of the transportation act; how far and when intrastate rates may be regulated by federal authority; the effect of the order of the Commission; whether in making it the Commission acted in a quasi-judicial capacity (People ex rel. R. R. vs. Wilcox, 194 N. Y. 383) or purely as a branch of the legislature (Prentiss vs. Atlantic Coast Line Co., 211 U. S. 210; R. R. vs. Garrett, 231 U. S. 298; Rwy. vs. Georgia, 235 U. S. 651); whether if it acted in the former capacity its determination that facts existed upon which its jurisdiction depends may be attacked collaterally (Ferguson vs. Crawford, 70 N. Y. 253, 265; People ex rel. Tweed vs. Liscomb, 60 N. Y. 559, 568; O'Donohue vs. Boies, 159 N. Y. 87, 99; Bank vs. Wilcox 15 R. I. 258; Noble vs. R. R., 147 U. S. 165); what is the effect of its finding if it acted in its legislative role; whether any authority under sections 416 and 422 is given the Commission over intrastate rates under the theory of a fair return for the combined business of a carrier—none of these questions were presented to us either orally or in writing—still less to the Special Term or the Appellate Division. Other questions as important may exist. We are unwilling to pass upon any of such questions presented upon a record made, in a material part at least, by oral stipulation in this court. We intimate no opinion with regard to any of them. We leave the matter entirely open, affirm the order and remit the proceeding to the Special Term of the Supreme Court, with the right to any of the parties to apply thereto for the purpose of opening the proceeding and, if such application be granted, then to offer in evidence the proceedings before the Interstate Commerce Commission, the order made therein, the findings and evidence upon which the same were based, and any other evidence bearing upon the order of the Interstate Commerce Commission which the parties or any of them may see fit to offer, subject to any objection that may be made. The order should be affirmed, with costs.

"Hiscock, Ch. J., Collin, Hogan, McLaughlin and Crane, JJ., concur; Chase, J., dissents, except from provision relating to modification or vacation of order.

"Order affirmed."

## TEXAS EXPRESS RATES

*The Traffic World Washington Bureau*

The Commission has ordered an investigation and hearing on an application of the American Railway Express Company asking that the intrastate express rates in Texas be brought up to the level of the interstate rates. Examiner Hunter will hold the hearings at Austin, Tex., January 27, 1921.

The order of the Commission shows that the express company was permitted to increase its interstate express rates 26 per cent under "Express Rates, 1920," 58 I. C. C. 281 and 707, but that the Railroad Commission of Texas, by an order dated November 5, 1920, denied the express company's request for permission to make increases for intrastate traffic similar to those permitted by the Commission.

The issue in the case is identical with that in all of the intrastate freight and passenger rate cases, three of which have thus far been decided in favor of the carriers by the Commission.

## LABOR BOARD AND ELECTRIC LINES

The United States Railroad Labor Board, in Decision No. 33 (Docket 26-A), has decided to limit its own power in the matter of disputes regarding interurban electric railways. The board had before it a large number of disputes between labor organizations and electric railways, and by this decision they are all dismissed. The petitioners had advanced a number of points with the intent to show that the railways involved are within the jurisdiction of the Labor Board. These included the statements that one or more of the electric railways are physically interstate property, that they perform the principal functions of steam railroads; that their charters permit operation by steam; that some of them have been operated by steam; that some of them operate jointly with steam trunk lines; that some of their stock is owned by steam trunk lines; that they do interstate business, and that they received a freight increase from the Interstate Commerce Commission under Ex Parte 74.

The board ruled that none of these points had any bearing on whether the railroad was an interurban line, and cited in its decision numerous cases where railroads having one or more of these characteristics have been legally pronounced "interurban."

With regard to the increase in freight rates, the decision says:

> The railways have received a freight increase from the Interstate Commerce Commission. They have not received a passenger increase. The reason they have received the former and not the latter is that the freight business done by interurban roads is sufficiently general to give Congress jurisdiction over the matter. Passenger traffic, on the other hand, is so local that Congress cannot properly regulate it. Therefore, such rates are left to the state commissions.

The Labor Board concludes that, since the Interstate Commerce Commission has ruled that it has no jurisdiction over interurban lines, and since the Labor Board and the Interstate Commerce Commisison were clearly intended to be interdependent in this matter, no claim for jurisdiction should be made by the Labor Board.

The decision concludes as follows:

> All the respondents are electrically operated. Some have been judicially determined to be interurban; the remainder are either so similar in character that they cannot be successfully differentiated, or are otherwise clearly excluded by the words of the act. Neither are the respondents operating as a part of any general steam railroad systems of transportation. Therefore, the Labor Board must decide that it has no jurisdiction over any of these respondents, and it herewith dismisses the applications of the petitioners for further hearing.

## RECONSIGNING RULES

*The Traffic World Washington Bureau*

In special permit No. 51143, amended, the Commission allows the cancellation and publication contemplated in the order, as originally issued, to be made, notwithstanding the order in I. and S. 1250. The effect of the permission is to allow the carriers to restore the reconsigning rules as they were prior to the recent abortive effort to change them.

# INTERPRETATION OF TARIFFS

(Twenty-sixth and last of a series of articles written for The Traffic World by R. R. Lethem.)

Another form of transit which is used to a large extent is the concentration and reshipment of cotton, cotton linters and regins. The development of the cotton business has resulted in the establishment of a large number of interior concentration points in the cotton producing territories in the South, both east and west of the Mississippi River. Such concentration points are quite often, though not always, located at junction points of two or more railroads. Cotton buyers or their agents at these points purchase cotton from the surrounding territory, and such cotton generally moves into the concentration point in a flat or uncompressed state, by wagon, river, or rail. It is there compressed, assorted and graded and then reshipped, generally in lots of 50 bales or more, to a mill point or to a port for reshipment to a mill point or for export.

Under the provisions of the tariffs providing for rules governing the concentration of cotton, a shipment of cotton originating at a certain point is billed into a concentrating point at the local rate and, if reshipped from the transit point within a specified period of time, on surrender of the inbound freight receipt a readjustment of the charges is made by which the shipper pays an amount which makes the total charges on the shipment equal to those that would have accrued had the shipment moved directly from origin to destination.

The concentration points are also points at which compresses are located and under the rates in effect from origin to final destination the cost of compression, which varies somewhat, is as a rule absorbed by the carriers.

Cotton may move in either of three forms and under three different and distinct rates—that is, as flat or uncompressed cotton, as compressed cotton, or as uncompressed cotton with carriers' privilege of compressing. Under rates which apply to uncompressed cotton with carrier's privilege of compression, the through rate from origin to destination includes the cost of compressing and the carrier may, as the term "carrier's privilege of compression" implies, either have the cotton compressed at its expense or transport it through to destination without compression.

As a rule, the difference betwen compressed and uncompressed rates represents the cost of compression, which formerly was usually 10 cents, but is now generally 20 cents per 100 pounds.

The compression is not a transportation service for the shipper. No obligation rests on the carrier to perform the service or to pay for it if it is performed by the shipper. The rates apply on uncompressed cotton with the understanding that, if, for the carrier's own purpose—to economize transportation and to conserve equipment or car space, flat cotton being more bulky than compressed cotton—it sees fit to compress the cotton en route to destination, it is authorized so to do at its own expense. A shipper of cotton is, therefore, in reality, not interested in the compression feature, except as to export cotton, as the compressing of cotton is primarily of advantage to the carrier only, and a very considerable amount of cotton, unless it has been shipped into concentration points, moves to the ports or mill points in an uncompressed state.

Cotton, however, is an agricultural product which cannot be properly prepared for shipment by the growers because the machinery necessary for ginning and compression is costly. Throughout the cotton growing section there are thousands of ginning plants to which the farmers team their cotton. At these gins the seed is removed and the lint put into bales of an average density of 12½ pounds per cubic foot and of an average weight of 500 pounds per bale. These are known as flat or uncompressed bales and are shipped in less than carloads, sometimes but one or two at a time, to near-by concentration and compression points. At the concentration and compression points they are sampled, graded and eventually reshipped in carload quantities, prior to which reshipment, however, they are recompressed at the carrier's expense to a density of 22½ pounds per cubic foot and are then known as compressed bales.

Owing to the fact that there are thousands of growers of cotton in the cotton growing sections of the South and a substantial proportion of them raise but a comparatively small amount of cotton, concentration is a necessity to many shippers and it can be readily seen that it enables the carriers to transport the cotton with the greatest conservation of its equipment for the reason that the less-than-carload movement into the concentration and compression point is short and on the longer haul outbound to the mill point or port of export, full carloads are secured, as a rule.

There are many grades of cotton, and as the mills both in this country and abroad purchase in lots of 100 bales or multiples thereof and demand even-running grades, it is necessary to have a larger supply to pick from than can be obtained at local stations. The greater portion of the cotton crop is sold in uncompressed bales and is graded at the concentration and compression points on samples extracted from the uncompressed bales.

Cotton is one of the principal agricultural products of the country and, as it is impractical for any substantial portion of it to move through from points of origin to final destination in full carloads of compressed bales, it has been necessary for the carriers to publish rates on cotton which apply in any-quantity lots and to establish concentration rules and regulations under which the cotton moves into the concentration and compressing point in less-than-carload lots and out of that point in full carloads on the basis of the through rate from point of origin to destination. Originally, all cotton was carried by the rail carriers in uncompressed bales. The first compression was at the ports and was paid for by the steamship companies. Later, compresses were built at interior points both by private interests and by the carriers and the carriers assumed the costs of compression and made uniform the allowances to the compress companies. The Commission has held, however, that where cotton is compressed at the ports and is delivered on the team tracks of the carrier where its responsibility ends and its service as a common carrier terminates, it is unlawful for the carriers to make an allowance for such compression after the transportation service of the carrier is terminated.

Concentration points are so located that cotton from an area from which concentration is allowed at that particular concentration point usually moves in the direction of its ultimate destination and from some of the territory the concentration rules are so constructed as to give the shippers from local points the opportunity to concentrate their cotton, at least at two points, with the subsequent opportunity of reshipment on an equality of rates. This involves, in some instances, back hauls or hauls of the compressed cotton to concentration points in a direction opposite to that of the ultimate destination.

Concentration points, therefore, serve three purposes: First, they constitute markets for the cotton growers; second, they constitute convenient places for assembling, sampling, grading and compressing the cotton and its subsequent sale to mill points or to foreign buyers; and, third, the assembling at concentration points enables the carriers to make up at these points carloads of the cotton for reshipment. Cotton that is grown at points between a port and the nearest interior concentration point is usually, but not always, moved in an uncompressed state; in fact, where the haul is short cotton is not usually compressed.

Under the concentration tariffs the carriers designate the compresses on their respective lines where uncompressed cotton can be concentrated or assembled from stations in a designated territory for market privileges, such as weighing, sampling, grading and assorting, and thereafter reshipped with the benefit of the through rate, including compressed charge, from origin to final destination. Any shipper of uncompressed cotton desiring to have his cotton assembled, sampled, graded and assorted before designating its final destination, can ship such cotton at a flat rate on an ordinary local bill of lading to the designated concentration point. On arrival there the carrier delivers the cotton to the compress company, takes the compress company's receipt for the same and delivers such receipt to the shipper and takes up its bill of lading and has no further control or authority over the cotton until offered for shipment out. The shipper, when ready to ship out, can give his instructions to the express company, take its binder and present the same to the carrier and receive a through bill of lading at the through rate from the transit point. The carrier then has the compress company compress the cotton, pays the concentration charge, and transports the cotton to destination. Such cotton moves under two separate bills of lading, one from the point of origin to the concentration point and the other from such compress point to destination, either domestic or foreign.

Transit cotton is cotton moving under through bills of lading compressed at an intermediate point. Under the tariffs of the carriers, any shipper of cotton desiring to ship uncompressed cotton to any domestic or foreign point can deliver such cotton to the carrier, receiving from the carrier a through bill of lading from origin to destination, the carrier reserving its right to compress in transit. The charge therefor being included in the through rate, the shipper simply pays the through rate and receives a through bill of lading, and such cotton is continuously in the control and custody of the carrier to destination and no storage charge is involved or accrues.

The St. Louis-San Francisco Railroad is one of the carriers operating in Southwestern territory—that is, in Arkansas, Missouri and Oklahoma, but not Louisiana and Texas—that handle a large tonnage of cotton, cotton linters, or regins, much of which is first concentrated at one of the numerous concentrating and compression points located on its line.

The rules governing the concentration and reshipping of cotton, cotton liners, and regins at points on the St. Louis-San Francisco Railroad in Arkansas, Missouri and Oklahoma are published in St. L.-S. F. R. R. Tariff No. 166-N, I. C. C. 7689.

We will, in order to illustrate the use thereof, assume that we have bought at Ringling, Okla., a local station on the Oklahoma, New Mexico & Pacific Railway, 68 bales of uncompressed or flat cotton. Under the provisions of item 175 of St. L.-S. F. R. R. Tariff No. 166-N, I. C. C. No. 7689, cotton originating at

points on the O. N. M. & P. Ry. may be concentrated and compressed at Ardmore, Okla., and in accordance with item 295, referred to in item 175, charges on the movement into that point will be assessed on basis of the local rate from origin of the cotton and collected by the carrier as per item 35, the total weight into the compress point, as per item 340, to be computed by multiplying the number of bales by 500 pounds, this total being 34,000 pounds.

Under the provisions of item 85, this cotton must be reshipped from the transit point within twelve calendar months from the date it is delivered at the transit point, this date being fixed by the date of the original paid freight bill for the inbound movement. We will suppose that the cotton in question is shipped into the transit point, September 15, 1920.

If the outbound shipment is to be forwarded to an interstate destination, by reason of the cotton having moved into a concentrating point located in the same state as that in which the point of origin, Ringling, Okla., is located, as is true in the present instance, in accordance with item 70 the bill of lading covering the inbound movement must bear on its face the endorsement that the cotton is for reshipment to an interstate destination.

Now, assume that we desire to reforward the cotton from the compress point to a mill point in New England—for instance, Fall River, Mass. We order the compress company to compress it and take out bill of lading for the reforwarding of the cotton. It is possible that we have shipped into Ardmore, Okla., the transit point, a number of bales of uncompressed cotton subsequent to the time of the outbound shipment from transit point, but under the provisions of item 55 only freight bills for cotton dated on or prior to the date of bill of lading covering the outbound movement from the transit point may be used.

On the reshipment of the cotton from the transit point, an adjustment of charges will be made in accordance with the provisions of item 15, on the presentation of claims supported by the original paid freight bills (or certified copies thereof in case of loss or destruction of the originals), covering the movement into the transit point, signed copies of bills of lading for as many bales of like commodity reshipped over these lines and a reshipping certificate in the form prescribed in item 15. Claims can only be filed by and paid to the owners of the freight bills covering the movement of the cotton into the transit point. In the event the cotton is sold and the consignor of the outbound shipment is other than the consignee of the inbound shipment the paid freight bills tendered in support of the claim must be accompanied by a certificate as provided for in item 30, showing that there has been a bona fide sale of the cotton. Under the adjustment of the charges, in accordance with item 295, referred to in item 175, the through rate from point of origin, concentration or compressing point, whichever is higher, to final destination, will be protected.

The through rate to be used is the rate in effect at time shipment left point of origin, in accordance with item 65.

The inbound movement to the compress or concentrating point, we have said, consisted of 68 bales, which at an estimated weight of 500 pounds each, totals 34,000 pounds. On this movement the local rate of the O. N. M. & P. Railway of $2.70 per bale, as published in O. N. M. & P. Ry. Tariff No. 2-A, I. C. C. No. 14, has been paid.

We will assume that the same number of bales are being reshipped from Ardmore, Okla., the compress point, as moved into that point—68 bales. On the outbound movement the rate from Ardmore, Okla., to Fall River, Mass., of $1.62 per 100 pounds, as published in F. A. Leland's Tariff No. 80-D, I. C. C. No. 1295, has been paid.

The through rate from Ringling, Okla., to Fall River, Mass., the final destination, is $1.63 per 100 pounds, as published in F. A. Leland's Tariff No. 80-D, I. C. C. No. 1295, while the rate from Ardmore, Okla., the compress point, is $1.62 per 100 pounds. The rate from Ringling, Okla., the point of origin being higher, this rate must be paid in final settlement.

The movement into the compress point having consisted of 68 bales, which, at an estimated weight of 500 pounds each, totals 34,000 pounds, and assuming that the total weight of the 68 bales reshipped from the compress point is 32,500 pounds, refund will be arrived at as follows: The total inbound charges on 68 bales at $2.70 per bale are $183.60 and the charges out of the concentration point on 32,500 pounds at $1.62 per 100 pounds are $526.50, making the total charges paid to the carriers $710.10. Charges based on the rate of $1.63 per 100 pounds from point of origin to final destination on 32,500 pounds are $529.75 and the refund due is, therefore, the difference between $710.10 and $529.75, or $180.35. This is in accordance with note 4 of item 145.

In the event the number of bales in the inbound shipment into the transit point exceeded the number reforwarded therefrom, as, for instance, in the example given above, if only 65 bales out of the 68 shipped into the transit point were reshipped, refund, in accordance with note 3 of item 145, will be made on an equal number of bales as covered by the outbound billing from the transit point and the original freight bill will be taken up and a memorandum freight bill to cover the balance of the number shipped into the transit point—three bales—will be given the shipper, which may be included in a future claim.

If in the example to which we have been referring, it happens that the outbound shipment from the transit point exceeds in the number of bales the inbound movement; for instance, if the number shipped outbound from the transit point totaled 68 bales, while the inbound movement consisted of but 65 bales, then, in accordance with note 4 of item 145, settlement will be made on the average weight per bale of the outbound cotton—that is, using the outbound weight of 32,500 pounds used in the example above—we find that the average weight of the 68 bales reshipped would be 478 pounds per bale, which weight, multiplied by the number of bales shipped into the transit point, would give us 31,070 pounds. The inbound charges on 65 bales at $2.70 per bale are $175.50 and the charges out of the concentration point on 31,070 pounds at $1.62 per 100 pounds are $503.34, a total of $678.84 paid to the carriers for the in and out bound hauls on the 65 bales shipped into the concentration point. Using the rate of $1.63 applicable from origin to final destination on 31,070 pounds, the total weight of 65 of the 68 bales shipped out of the concentrating point, based upon the average weight of the 68 bales shipped out of the concentration point, the charges are $506.44 and the refund due is the difference between $678.84 and $506.44, which is $172.40.

A memorandum freight bill will be given by the carrier for the three bales which were shipped out in excess of the number shipped in, which may be included in a subsequent claim, provided a freight bill covering an inbound movement prior to the date of the memorandum freight bill issued to cover the three bales is in the possession of the shipper.

The compress at Ardmore, Okla., is located on the tracks of the Gulf, Colorado & Santa Fe and Chicago, Rock Island & Pacific railroads, but, in accordance with the provisions of item 80, the St. Louis-San Francisco Railroad will absorb the switching charges of the G. S. & S. F. or the C. R. I. & P. railroads at that point, on the shipment in question.

There are a number of other items in St. Louis-San Francisco Tariff No. 166-N, I. C. C. No. 7689, which are of interest to the shipper in connection with the concentration of cotton at points on that line. For instance, item No. 20 provides that agents will not accept cotton, cotton linters, or regins at points of origin with less than six bands per bale. Item 40, paragraph A thereof, provides that cotton, cotton linters or regins may be stopped under rules contained therein but once, except as otherwise specifically provided. Paragraph B of this item provides that freight bills for cotton, cotton linters or regins delivered for local consumption will not be available for reshipment and must be canceled at once. Under paragraph C of the same item the substitution of one bale of cotton, cotton linters or regins for other bales will be permitted, inasmuch as the integrity of the through rate is preserved by the requirements as to the surrender of the inbound freight bills as per item 15. In accordance with item 45, when cotton, cotton linters or regins originates at points on connecting lines from which transit is not specifically authorized in the tariff, transit privileges therein will be accorded on the basis of the tariff rate from the St. Louis-San Francisco Railroad junction point (proper), the connecting line's local rate to be paid in addition to that rate. Under item 50 cotton originating at points where compresses are located, if it is to be compressed, must be compressed at that point, except that if, through the disability of such compress, the service cannot be had at that point, the carrier reserves the right to use any other available compress without additional charge to the shipper. This is in accordance with item 60. Under this item, while the compress points specified in items 165 to 285 are to be used, the carrier may for its convenience use any other available compress. Under item 75 the shipments transported under this tariff, in addition to the rates and rules shown therein, are entitled to such privileges and are subject to such charges as are covered by publications of the St. Louis-San Francisco Railroad and participating carriers relating to storage, demurrage, terminal charges and other transit charges, as modified by items 82 and 83 relating to demurrage and storage. Items 90 to 110, inclusive, relate to the booking of shipments for export, the points at which shipments are booked being named. Under the provisions of item 115, when cotton, cotton linters, or regins are reshipped after the closing of the compress and are reshipped in uncompressed form, the inbound charges will be refunded and the through rate applied in accordance with item 65. Item 120 provides that cotton and cotton linters must be plainly marked by shippers with some permanent and indelible mark sufficient to identify them at all times. Under note 6 of item 145, when there are no through rates in effect from the point of origin to final destination, an adjustment of charges will be made on the base point—that is, the Ohio and Mississippi river crossings, Atlantic or Gulf port etc., through which the shipment moves. Finally, in accordance with item 150, claims for refund of the inbound charges must be supported by properly signed documents and, where a rubber stamp or written signature of a firm or corporation is used, the authorized representative of the firm or corporation must sign in addition.

# Questions and Answers

In this department will be answered questions of both legal and practical nature that confront persons dealing with traffic. A specialist on interstate commerce law, who is a member of our legal department, will give his opinion in answer to any simple question relating to the law of interstate transportation of freight. A traffic man of long experience and wide knowledge will answer questions relating to practical traffic problems. We do not desire to take the place of the traffic man but to help him in his work. Persons desiring immediate answer by mail or wire or a more elaborate treatment of any question—by the citation of authorities in a legal opinion, for instance—may obtain this kind of private service by the payment of a reasonable fee. The right is reserved to refuse to answer in this department any question, legal or traffic, that it may appear to us unwise to answer or that involves a situation too complex for the kind of investigation herein contemplated.

Address Questions and Answers Department,
**Traffic Service Corporation,** Colorado Building, Washington, D. C.

### Reconsignment vs. Reshipment

**Washington.**—Question: Please let us have your interpretation of the diversion rules as covered by the C. M. & St. P. Railway Tariff 11140-C, Interstate Commerce Commission B-3399, and demurrage rules as covered by Fairbanks issue.

We received a carload of wheat at our mill from local points on the C. M. & St. P. Railway, same having been delivered to us on switch account of standing order to deliver all cars on arrival. After opening the car in question we found that we could not use that particular grade of wheat and sold to a feed dealer within the same switching zone. We paid the freight in full for delivery to our mill. We issued a switching order and paid in addition the switching charge from our mill to the feed dealer to whom we sold. The demurrage clerk in this district representing the railroads claims the shipment is a diversion and that we are not entitled to 48 hours' free time on average agreement. Note.—Rule 2 of section A, Fairbanks' Rules, reads:

> When a car held for loading or unloading is moved by the railroad to another point in the same yard or industry to complete loading or unloading, only 48 hours free time will be allowed except when the railroad makes a charge for such movement the time incident thereto shall not be computed against the car.

Please note tariff also provides that loading includes furnishing of forwarding directions on outbound cars. We claim surrendering the switching order or the bill of lading is the directions. Unloading includes payment of lawful freight charges. Please say if we are justified in our contention of being entitled to 48 hours' free time.

Answer: In the reconsignment case, I. and S. Docket 1050, 47 I. C. C. 590, the Commission, in considering rule 9 of the reconsigning rules, on pages 633 and 634, said:

> They further contend that unless a charge is made at rate-breaking points shippers located at such points will be given an advantage over competing shippers at other points. The principal ground of opposition is the disparity between the service of reconsignment and the terminal services which may be secured under the local intermediate rates. It is pointed out that under such rates the shipper may have his inbound shipment switched to an industry track for unloading, where it may be detained 48 hours without demurrage. The same car may be held an additional 48 hours for reloading, after which it will be switched to the carrier's tracks and forwarded all under the local rates. The absorption of connecting line switching charges under local rates is also a frequent occurrence. From this comparison it is claimed that the assessment of a charge for the reconsignment of a loaded car, the service being admittedly less than in the case described, is unreasonable. It is also asserted that the charge at rate-breaking points could be evaded by taking delivery of shipments and reforwarding them. Similar contentions were considered by us in Kehoe & Co. vs. I. C. R. R. Co., 11 I. C. C. 311, in which it was said: "Wherever the through rate is equal to the sum of the locals a dealer situated at the point where the locals combine, as, in this case, at Cairo, may avail himself of such advantages as may result from making two shipments instead of one, but to obtain such advantages he must bear the increased expense incident to two shipments, and there must, in fact, be two shipments without any carrier or agent of the carrier acting for the shipper. Such advantage, if any, as may be incident to shipping in and out at an aggregate combination of charges equal to the through rate, cannot be taken away except by condemning the making of a through rate by adding the locals. The mere fact that it is possible for a dealer situated at Cairo to do business in this way at greater cost, both to himself and the carrier, does not justify the Commission in holding as unlawful a reasonable reconsignment charge."

Again the Commission, in D. E. Wood Butter Co. vs. C. C. C. & St. L. Ry. Co., 16 I. C. C. 375, said: "It is well settled that a shipper has the right to consign a shipment to a given point, pay charges upon it, assume custody and take possession of the property, and later reship it to another point under rates lawfully applicable to such shipment.—Morgan et al. vs. Mo. Kan. & Tex. Ry. Co. et al., 12 I. C. C."

Inasmuch as neither the carrier nor an agent of the carrier acted for the shipper in the instant case, we are of the opinion that it was not a reconsignment, but that two shipments were made, for which free time must be allowed.

### Carload Rate for Carload Service

**Ohio.**—Question: Wish to call your attention to rule 15, covering the charges for less-than-carload shipments loaded in cars by ourselves, on which, according to the above-mentioned rule the minimum is to be charged on car, according to section No. 2. According to section No. 2, if a shipment is tendered as less-than-carload freight loaded by consignees, the cheapest rate should apply. That is, if the the less-than-carload rate is cheaper at actual weight than the minimum weight at carload rate, the cheapest rate according to actual weight should apply.

We loaded shipments of empty sacks in car at our yard, approximately 225 bundles, based at 50 pounds to the bundle, weight 11,250 pounds. Shipment moved to New Castle, Pa. By applying the less-than-carload rate at actual weight is by far cheaper than the carload rate at minimum weight.

The carriers are insisting that we pay on the minimum carload rate, due to the fact that we loaded shipment in car at our warehouse. Our contention is that if this material was brought to their freight house it would be necessary for them to take it in their warehouse or load it in car at time shipment was tendered to them. We loading this freight at our warehouse eliminates them from handling the freight, especially this bulky material, and if they were to handle the freight as tendered to them it would be necessary for them to charge only the less-than-carload rate. Therefore, our opinion is that the cheapest rate should apply. Kindly advise us the legal ruling in regard to this matter.

Answer: The Interstate Commerce Commission has, in several cases, ruled that where shipments are tendered to a carrier as carload shipments the carload rate and carload minimum weight must be assessed, even though the less-than-carload rate at actual rates make a lower charge. In these cases the Commission has distinguished the carload shipment from a less-than-carload shipment by the manner in which the shipments are tendered to the carrier. See Passow & Sons vs. C. M. & St. P. Ry. Co., 37 I. C. C. 711; Sam H. Kyle vs. M. K. & T. Ry., 42 I. C. C. 335; Columbian Iron Works vs. So. Ry. Co., 45 I. C. C. 173, and Walter Seinecker Supply Co. vs. T. & O. C. Ry. Co., 51 I. C. C. 133.

The action of a shipper in ordering a car switched to his place of loading and the subsequent tender to the carrier of a bill of lading showing car number and initials is sufficient to show that a carload shipment is intended. Carriers do not ordinarily switch cars to shipper's plant or loading place to receive L. C. L. freight, and they understand that when shippers order equipment for a particular consignment that a carload shipment is contemplated. It is not necessary that the shipper say that his consignment is carload or less-than-carload; his manner of tendering to the carrier determines this feature. The rule is that if a car is ordered and set in on a shipper's siding and the shipment is loaded by the shipper without complying with the provisions of the classification respecting the making of less-than-carload shipments, the shipper has received a carload service, for which a carload rate must be paid.

### Payment of Freight Charges

**Colorado.**—Question: Please refer to your answer to "Ohio" on page 1078, Traffic World of December 4.

In this connection we would refer you to the fact that regulations read "Carriers may relinquish possession of the freight and extend credit for a period of ninety-six hours." Forty-eight hours seems to be the credit limit in this district for shippers, who are on the credit list, and we would ask if it is entirely optional with the carriers as to whether they will extend credit for a period of ninety-six hours or if this regulation was intended to give shippers a right to this length of time.

Answer. Section 1 of the Commission's order in Ex Parte No. 73, In Re Section 3 of the Interstate Commerce Act is amended by Section 405 of the Transportation Act 1920, 57 I. C. C. 591, reads as follows:

"Where retention of possession of any freight by the carrier until the tariff rates and charges thereon have been paid will retard prompt delivery or will retard prompt release of equipment or station facilities, the carrier, upon taking precautions deemed by it to be sufficient to insure payment of the tariff charges within the period of credit herein specified, may relinquish possession of the freight in advance of payment of the tariff charges thereon and may extend credit in the amount of such charges to those who undertake to pay such charges, such persons being herein called shippers, for a period of ninety-six hours to be computed as follows:

(a) Where the freight bill is presented to the shipper prior to or at the time of, delivery of the freight the ninety-six hours of credit shall run from the first 4:00 p. m., following the delivery of the freight.

(b) Where the freight bill is presented to the shipper subsequent to the time the freight is delivered the ninety-six hours of credit shall run from the first 4:00 p. m. following the presentation of the freight bill."

Under the provisions of this section, the carriers may extend credit for the freight charges for a period of ninety-six hours, the period of time to be computed in accordance with paragraphs A and B, but it is not compulsory that they shall extend credit at all.

### Notice of Claim

**Illinois.**—Question: We would like to have you advise us if you know of any ruling that has been handed down by the Interstate Commerce Commission that make it necessary for the ex-

press company to make proper adjustment of claim on shipment that has been lost or damaged, and which claim has been filed after the limited four months' period has expired, specified in the conditions on the express receipt, that the claimant has given notice to the express company that a claim be filed in line with the provision of the I. C. C. Conference Ruling No. 510 of June 21, 1917.

In making the question more plain, is the express company compelled through previous rulings to pay claims, which claims were not filed, but notice given within the limit period?

Answer: In Conference Ruling 510, the Commission expressed the view that the filing of a notice of claim with the carrier within the period of time prescribed by the bill of lading is a compliance with the bill of lading provision, citing the case of G. F. & A. Ry. vs. Blish Milling Co., 241 U. S. 190. Under this decision of the Supreme Court a notice of intended claim which describes the shipment with reasonable definiteness is sufficient to stop the running of the four months' period.

### (1) Routing—No Obligation on the Part of Carrier to Inform Shipper of Lower Rate Via Another Route. (2) Sale of Unclaimed Goods Without Notification to Shipper

**New York.**—Question: (1) A less carload shipment carded in a ferry car to one of the four railroad stations at "X" is accepted by Agent "A," who did not quote through rates. Agent "A" made delivery by using combination of local rates instead of delivering shipment to one of the other three agents at "X," who quoted through rates so that shipment could be delivered consignee at less expense, shipment going forward f. o. b.

Had Agent "A" right to accept this shipment when he did not quote through joint rates, and if he was going to use combination of local rates, should he not have advised us in this matter, and are we not justly entitled to the difference between the amount of the through joint rates and the amount totaling the combination of local rates?

(2) Shipment to order notify, which shipment remained on hand at destination unclaimed. Shipment was sold by railroad company without notifying us that it had not been taken up by consignee. Was the transportation company within its rights to sell this shipment before notifying us, no matter whether our name and address was stenciled on the shipment? This shipment was stenciled when leaving our factory "order—our name —notify." Also state in what section of the Interstate Commerce act that gives the transportation companies authority to sell shipments after they are on hand 60 days.

Answer: (1) The Commission has held that the carrier is not liable for misrouting in failing to inform a shipper of a lower rate applicable via another route and is under no obligation to decline the shipment because of a lower rate over a competing line. We are assuming that the line to whom the shipment was delivered at "X" routed the shipment via the route over which the lowest rate applied; if so, that line is not liable for misroute.

(2) While under the Uniform Storage Rules, as published in J. E. Fairbanks' Tariff No. 1B, I. C. C. No. 9, notice of refused or unclaimed less than carload shipments must be sent or given consignor, there is, however, no duty imposed upon the carrier under the storage tariff to notify the consignor of refused or unclaimed carload shipments, although the courts have generally ruled that carriers are required to give consignor notice of unclaimed or refused shipments. The right of a carrier to sell an unclaimed shipment is governed by the statutory provisions of the state in which the delivery is made, and these statutes must be strictly complied with by the carrier in selling unclaimed freight. There is nothing in the Interstate Commerce act with respect to the sale of unclaimed freight. However, section 26 of the Bill of Lading act provides that after goods have been lawfully sold to satisfy a carrier's lien or because they have not been claimed, or because they are perishable or hazardous, the carrier shall not thereafter be liable for failure to deliver the goods themselves to the consignee or owner of the goods or to the holder of the bill given for the goods when they were shipped, even if such bill be an order bill.

### Erroneous Declaration of Express Valuation

**Virginia.**—Question: Referring to your answer to Georgia in November 27 issue of The Traffic World on page 1036, headed "Erroneous Declaration of Express Valuation." In your last sentence you say that if the declaration of the value of the entire shipment was $8.00 and the express company charged the rate dependent upon that value, such declaration is binding. Did not the express company in reality charge a rate based on the valuation of $50.00, and cannot claimant really recover up to that amount if the shipment is actually of that value or more, notwithstanding the fact that he declared a value of $8.00? I believe I have seen in some previous issue of The Traffic World where you took the latter position, but I am unable to find it now. I am writing you thinking that perhaps the impression conveyed in your last sentence was not intentional.

Answer: In our answer to Georgia" on page 1036 of the November 27, 1920, Traffic World, we did not intend, to convey the impression that, in the event of a valuation of $8.00 is placed in the express receipt, the shipper could only recover that amount, although it is true that the answer is so warded that this construction may properly be placed upon it. The idea we intended to convey was that when a shipper, by inserting a certain valuation in an express receipt for the purpose of securing the benefit of a lower rate in consideration of a released valuation, he cannot afterwards claim that it was through error that he inserted such valuation in the express receipt and that he is entitled to the actual value of the shipment.

While we are not aware of any decisions of the courts to the effect that where a valuation less than $50.00 is inserted in the express receipt that in case of loss or damage the shipper is entitled to recover the actual value thereof, but not to exceed $50.00, in view of the fact that the express companies have published no rates dependent upon valuations less than $50.00, we are of the opinion that if the shipment described was lost or wholly destroyed and was worth $50.00 or more, this amount, namely, $50.00, can be recovered from the express company even though the declared or released value as stated in the express receipt was but $8.00.

### Conflict Between Destination Shown on Bill of Lading and on Package

**Colorado.**—Question: Through the columns of The Traffic World will you kindly advise what the rights of a shipper are when a shipment is delivered to the railroad company correctly marked, but bill of lading is made out to a wrong destination, not agreeing with the marks on the shipment?

We have a shipment which was to be billed to Charlotte, N. C., via Memphis, Tenn., and shipment was so marked. In making out the bill of lading the stenographer left out the word "Charlotte," which made the bill of lading read North Carolina via Memphis, Tenn.

There is no such station as North Carolina, Tenn., but there is a steamboat landing so named on the Tennessee River, and shipment was delivered to this point and then diverted to correct destination. Can carrier be compelled to protect the through rate from Pueblo, Colo., to Charlotte, N. C., on this shipment?

Answer: In several cases the Commission has held that a carrier is not liable for the freight charges incurred in transporting the property to the destination shown on the package, although the correct destination is shown in the bill of lading. We are therefore of the opinion that the carrier would be held responsible for the additional freight charges resulting from the delivery of the shipment at North Carolina, Tenn., and its subsequent transportation to the proper destination, namely, Charlotte, N. C. This particularly in view of the fact that a bill of lading reading North Carolina via Memphis, Tenn., should not warrant the carrier in forwarding the shipment to a station by the name of North Carolina in the state of Tennessee.

### Demurrage—Cars Held for Orders

**Missouri.**—Question: With reference to your answer to New Jersey, in your issue of December 4, 1920, page 1077.

We fully understand that the carrier was not obligated to notify B of the arrival of car, since the car was consigned to A, but desire to know carrier's authority for ignoring A's instructions to the railroad company to deliver the car to B. A gave disposition, and it impresses us that the carrier should have acted promptly and followed out these instructions. We do not think that your answer fully covers the question asked by "New Jersey" and we would thank you for sufficient space in your next issue to further enlighten us on this subject.

Answer: On further consideration of the matter we are of the opinion that, inasmuch as the carrier had instructions from A to deliver the car to B, it should either have made delivery of the car to B, or, if the instructions from B as to the holding of the cars subject to B's orders were such as to warrant the holding of the car for B's instructions, the carrier should have asked B for instructions with respect to the delivery of the car.

### Storage

**Pennsylvania.**—Question: A railroad owned warehouse (not public) filing its schedule of storage charges, rules and regulations with the Interstate Commerce Commission increases its rates, effective on a certain day, say, for illustration, the 15th day of the month. The storage rates apply for monthly periods or fractions thereof. Shipments (intrastate or interstate) arrive and are placed in storage the first day of the month and removed the last day of the same month, the storage rate being increased on the 15th. Is the railroad permitted to charge one-half month at the old rate and the balance at the advanced rate, or should the old rate apply for the full month, account of its being effective when the monthly period began?

As to demurrage charges, the Commission has ruled that the rate in effect on date of accrual governs, but this is a daily rate instead of for a monthly period. I enclose herewith copy of a letter which will further explain the proposition. As I do not know of any previous ruling by the Commission, I will appreciate advice through the columns of The Traffic World.

Answer: In the case of A. Blum & Popper vs. B. & M. R. R., 49 I. C. C. 107, the Interstate Commerce Commission held that the tariff in effect when storage began governed the collection

of storage charges, citing Conference Ruling No. 473. However, in its Conference Ruling of October 7, rescinding Conference Rulings 473 and 407, the Commission held that off-track storage not in transit is controlled by the tariffs in effect contemporaneously with the accrual of this service and therefore is subject to such changes as lawfully may be made in the applicable tariff during the period of accrual. In according with this conference ruling it would appear that the proper charges are being assessed on the shipments in question. We are not aware of any later ruling of the Commission with respect to this question.

### Freight Charges—Liability of Consignor for

**Ohio.**—Question: We made a contract with a certain company for our scrap iron, tin and galvanized. This contract was signed by both parties last July. We were to load car within 30 days but on account of embargoes we could not, and informed this company of it, and they extended the time 15 days, and we made shipment within the extra 15 days they granted us.

These cars were sold bill of lading attached, but in turn shipped to another firm, but after we loaded the first car and car reached its destination we were informed by our agent that this car was refused. We got in touch with the party we sold it to and he informed us to load the second car and send to the same firm; that he would see to it that they would accept both cars. Cars are loaded as per contracted, bottom layer consisted of tin, second layer galvanize and third layer iron.

About ten days after we sent the last car our agent received wire stating both cars were refused on account of quality. We got in touch with the party we sold them to and he informed us they were refused on account of decline in market.

These two cars are still held by the railroad and accumulating car service and the car service on each run about 60 days up to this time. Our name does not appear on the bill of lading, except my initial, and we have our money for both of these cars, and the railroad company which is holding these two cars informed us that they are going to try and sell them, and if they do not that they are going to unload on their right of way, and also informed us that they would try and collect charges for demurrage freight and all other expenses, and in case they cannot collect these charges that they were going to turn this matter over to their lawyers. Are we held accountable in this matter?

Answer: Conference Ruling No. 314 of the I. C. C. reads as follows: "The law requires the carrier to collect and the party legally responsible to pay the lawfully established rates without deviation therefrom. It follows that it is the duty of carriers to exhaust their legal remedies in order to collect undercharges from the party or parties legally responsible therefor. It is not for the Commission, however, to determine in any case which party, consignor or consignee, is legally liable for the undercharge, that being a question determinable only by a court having jurisdiction and upon the facts of each case."

Generally speaking, both the consignor and consignee are responsible for the payment of the lawfully established rate; the former as the party with whom the contract of carriage was made and the latter as prima facie owner of the goods. A carrier is entitled to its transportation charges either in advance or on delivery of the shipment in good order at destination. In a straight consignment, the ownership of the goods is in the consignee immediately after the shipper has delivered it to the initial carrier for transportation and the consignee as the presumptive owner is the party primarily liable for the charges. If, however, the carrier cannot collect the same from the consignee it can look to the shipper for payment on the ground that the latter is the party with whom the contract of carriage was made.

In a recent case decided by the New York Supreme Court, namely, C. R. R. of N. J. vs. Berry, 165 N. Y. S., it was held that where the initial carrier whose line was entirely in the state took from the shipper a bill of lading providing that the owner or consignee should pay the freight and all other charges, and on arrival in another state over the line of plaintiff, a connecting line, the consignee after notice refused to receive the goods and the shipper after notice, gave the matter no attention, whereupon the plaintiff stored the goods and brought action for the amount of freight charges, storage, etc., less proceeds of sale, the shipper, though not the owner of the goods at their delivery to the initial carrier, was liable for such charges.

While there are decisions to the contrary, the weight of authority is to the effect that the consignor can be held liable for freight charges in the event the charges cannot be collected from the consignee.

### Reconsignment vs. Reshipment

**New York.**—Question: During 1917 we had occasion to ship from Erie, Pa., to Buffalo, N. Y., several carloads of scrap iron. The lading that was issued in this instance read "A & Co., Buffalo, N. Y.," the goods being intended for our yard. One of our customers at Depew, N. Y., being in need of material, we requested the railroad company to forward the cars to that point. The rate from Erie to Buffalo at the time was $1.06, from Buffalo to Depew, 32c. We paid the freight from Erie to Buffalo, but on delivery of the cars at Depew it was found that the railroad company had increased the charges to a through rate of $2.32 per gross ton, Erie to Depew, N. Y., plus a $5.00 reconsigning charge. We filed objections to this, claiming that the original shipment Erie to Buffalo being covered by a separate and distinct lading calling for Buffalo, N. Y., delivery as a separate transaction and had no connection with the shipment moving from Buffalo to Depew. The carrier claims that the legal rate applicable to this shipment is a through one of $2.32 from Erie to Depew. What is your opinion in the matter?

Answer: While in the case of D. E. Wood Butter Co. vs. C. C. C. & St. L. Ry. Co., 16 I. C. C. 375, the Commission said that it is well settled that a shipper has the right to consign a shipment to a given point, pay charges upon it, assume custody and take possession of the property, and later reship it to another point under rates lawfully applicable to such shipment, the mere fact that you paid the freight charges to Buffalo, without otherwise taking possession of the shipment, does not entitle you to the combination rate, in view of the fact that the carrier acted for you in making the reconsignment. We are, therefore, of the opinion that the through rate plus the reconsigning charge should be paid on the shipment.

### Supreme Court Decisions

**Missouri.**—Question: I would appreciate it very much you giving me reference to the case decided by the Supreme Court of the United States involving the Blish Milling Co., which case, I think, was decided about a year ago.

I would also thank you to kindly give me reference to the case decided by the United States Supreme Court about a year and a half ago on appeal of the District Court of Maryland, where the Supreme Court of the United States affirmed a judgment of the lower court on a shipment of strawberries which was delayed three hours, and which the jury had found to be unreasonable delay.

Answer: The decision of the Supreme Court of the United States in the so-called Blish case, namely, G. F. & A. Ry. vs. Blish Milling Co., is to be found in Vol. 241 of the United States Supreme Court Reports, at page 190. This decision is also given in full on page 1054 of the May 21, 1916, issue of The Traffic World. The other case to which you refer is that of the N. Y. P. & N. Ry. vs. the Peninsula Produce Exchange, 240 U. S. 34.

### Interstate Traffic—Definition of

**New York.**—Question: Will you kindly inform us if a shipment moving from New York, N. Y., to Montreal, Canada, over the line of the New York Central Railroad and not at any time moving out of the state of New York until it had crossed the border would be considered an interstate movement?

We would also like to know if it is proper for the railroad to increase their rates 40 per cent in accordance with the general increase effective August 26, 1920. The railroad claims it is entitled to this increase on such a movement.

Answer: The transportation included in the Interstate Commerce act is that from one state or territory of the United States or the District of Columbia to any other state or territory of the United States or the District of Columbia, or from one place in a territory to another place in the same territory, or from any place in the United States through a foreign country to any other place in the United States, or from or to any place in the United States to or from a foreign country. This is in accordance with paragraph 1 of Section 1 of the Interstate Commerce act. Paragraph 2 of Section 1 of the act states that the provisions of this act shall also apply to such transportation of passengers and property and transmission of intelligence, but only in so far as such transportation or transmission takes place within the United States, but shall not apply to the transportation of passengers or property or to the receiving, delivering, storing or holding of property wholly within one state and not shipped to or from a foreign country from or to any place in the United States as aforesaid.

Under definition the movement from New York, N. Y., to Montreal, Canada, via the line of the New York Central R. R. through the state of New York would be an interstate movement and the carriers are entitled to increase their rate 40 per cent in accordance with Ex Parte 74 for that portion of the haul within the United States, and also for that portion of the haul in Canada unless prohibited by the laws of the Dominion of Canada.

### Delay Resulting from Strike

**New York.**—Question: We have quite a few claims covering storage and demurrer which accrued during harbor strikes in New York City which railroads have declined, and we would thank you to advise if, in your opinion, shippers can secure any redress. During the longshoremen's strike railroads were ready to deliver freight to steamship companies, but due to the longshoremen's strike at piers, steamship companies were unable to receive the freight, while during the "outlaw" railroad strike the steamship companies would receive freight but the railroads were unable to make delivery owing to strike on part of their employes.

Answer: In the Bill of Lading Case, Docket 4844, "In the

Matter of Bills of Lading," 52 I. C. C. 671, the Interstate Commerce Commission on page 705 said: "Although the matter is not brought in issue, we are not satisfied with the carrier's claim of exemption, which is included in this clause, from loss, damage or delay on account of strikes or riots. We are of the opinion and find that this provision should be amended so as to provide that carriers shall not be liable for 'delay caused by riots or strikes.' As thus modified we think that the condition prescribed proposed by the carriers would be in accord with the law and just and reasonable.

A carrier is not an insurer against delay to the same extent as it is an insurer against loss of goods. At the root of the matter lies the question as to whether or not the railroad has been negligent. If the delay has been caused by a strike which has occurred without the fault of the carrier, then the carrier will not be liable for damage caused by delay. On the other hand, where a strike is caused by a reduction of wages which disables the company from carrying on its business, this will not excuse the company for failure to transport the goods to destination within a reasonable period of time. This on the theory that the railroad company is responsible for the strike. Each case stands by itself.

### Routing—No Obligation on the Part of the Carrier to Inform Shipper of Lower Rate via Another Route

**Ohio.**—Question: We had a shipment of sewer pipe shipped from Akron to Corlett, Ohio, Erie R. R. The car moved via the B. & O. and Erie to Corlett.

The B. & O. publish a rate in their tariff to Corlett of 10½ cents, whereas the Erie publish a rate of 9 cents to Corlett, over their rails from point of origin. This 9-cent rate is also Cleveland, Ohio, rate.

Our contention is that the Interstate Commerce Commission rules that when there are two specific rates from the same point of origin to the same point of destination the cheapest rate should apply. According to Conference Ruling 286F, we find that in cases of this kind the cheapest rate should apply, and that the carriers are obligated to ship the material by the cheapest routing and lowest rating. Kindly advise if this is correct, as the Erie are assessing a rate of 10½ cents via the B. & O. and Erie, whereas the Erie publish a rate of 9 cents via their rails.

Answer: The shipper is charged with notice of the published rates. In order to secure the benefit of the 9-cent rate which applied via the Erie Railroad you should have delivered the shipment to that line at Akron, Ohio. The Interstate Commerce Commission has held that there is no obligation on the part of a carrier to turn a shipment over to a competing line via which a lower rate is applicable. See Tyler Coal & Coke Co. vs. P. R. R., Unreported Opinion, 1986; Paragould Lumber Co. vs. Mo. Pac. Ry., Unreported Opinion 45; Colorado Bedding Co. vs. C. B. & Q., 18 I. C. C. 403, and Dewey Bros. Co. vs. Southern Ry. Co. et al., 51 I. C. C. 160.

### Payment of Exchange

**Iowa.**—Question: Agent J. E. Fairbank's Tariff No. 7 covers mileage allowance for privately owned equipment. We operate a line of standard refrigerator cars on which the carriers allow us two cents per mile. The railroads send us postal notices at the close of every month showing the amounts our cars earned, and the postal cards carry notations instructing us to draw on the treasurers for the amounts. In every case there is an exchange charge in connection with the collection which the railroads have refused to pay, therefore the amount we actually receive for the mileage earned is less than that authorized in the above tariff.

Kindly let us know whether, in your opinion, the carriers should pay the exchange charge, and if not, how are we going to collect the full mileage in view of the instructions from the carriers that we must draw on their treasurers?

Answer: It is a commercial custom for the party located in another city to whom a check is sent to pay the amount of exchange collected by the bank, and in view of this long-established custom we hardly believe that you have a cause of action against the carriers, although the matter could, of course, only be determined through suit.

### Allowance for Material Used for Protection of Freight in Open Cars

**Illinois.**—Question: On account of the acute shortage of loading equipment that has existed for the past couple of years, we were compelled to allow shippers of a certain commodity that we are using in the manufacture of our products to load same in gondola cars instead of box cars in order to insure our getting an adequate supply of this material to keep our plant in operation. This material requires protection from the elements of the weather while in transit, and in shipping same in gondolas it is necessary to use a covering for protection. The question is, are charges legally applicable on the weight of the covering used for protection of this material from the elements of the weather, which is necessitated account carrier's inability to furnish suitable equipment for the transportation of the commodity offered them for shipment?

It is our contention that shippers should not be penalized by reason of the fact that carriers are not able to furnish suitable equipment for the transportation of the commodity offered them for transportation, as it is incumbent upon them to furnish suitable equipment under the Interstate Commerce Law. It occurs to us that we should be allowed at least 500 lbs. for this covering, in accordance with Rule 30 of Consolidated Freight Classification No. 1. We would be pleased to receive your opinion on this matter.

Answer: Under the present tariffs there is no authority for an allowance to cover the weight of material used to protect freight loaded in open top cars, the provision of Section 2 of Rule 30 of Consolidated Classification No. 1 hardly being applicable.

In times of car shortage a shipper is practically compelled to use open equipment for articles which should properly move in closed cars, but as under ordinary operating conditions there is no necessity for this and a shipper can demand the proper equipment, we are of the opinion that an allowance for this purpose would not be required of the carrier.

# Miscellaneous Decisions

**Traffic Cases Recently Decided by State and Federal Courts**



### REGULATION OF COMMON CARRIERS

**Private Sidings:**

(Supreme Court of Appeals of West Virginia.) A provision in a contract between a railroad company, operating a common carrier, and the owner of a coal mine, under which a private siding has been constructed and used by the railroad company and the mine owner, obligating the latter to indemnify and save harmless the former for or on account of any loss or damage that may at any time in any manner arise to the railroad company from its use or operation of the siding, does not contravene public policy and is valid.—Borderland Coal Co. vs. Norfolk & W. Ry. Co., 104 S. E. Rept. 624.

Such a provision precludes right of recovery in the mine owner for the loss or damage inflicted by simple negligence on the part of the railroad company in the use of such siding.—Ibid.

## TRANSIT LUMBER PENALTY

*The Traffic World Washington Bureau*

Application for permission to intervene in No. 11818, American Wholesale Lumber Association vs. John Barton Payne, Aberdeen & Rockfish et al., has been made by A. G. T. Moore, traffic manager, in behalf of the Southern Pine Association. The case in which the applicant desires to be made a party is the formal complaint of the so-called transit lumber dealers against the $10 a day penalty imposed on lumber held in care for reconsignment or diversion beyond free time.

In support of the petition for intervention, Mr. Moore set forth that the petitioner is a corporation "selling statistical traffic and other service to subscribers who are lumber manufacturers in Oklahoma, Arkansas, Louisiana, Texas, Mississippi, Alabama, Georgia and Florida." Another allegation in support of the petition for intervention is that the complaint in this case raises, among other things, the question of the necessity for, and the justice of, the penalty charge now in effect in tariffs on lumber held for reconsignment after the 48 hours' free time.

After reviewing the inquiries of the Commission into the causes of car congestion, beginning with the inquiry at Louisville in November, 1916, Moore said that on December 1, 1920, the defendant carriers, through J. E. Fairbanks, their agent, filed supplement 5 to Fairbanks' I. C. C., No. 8, providing, among other things, for the continuance of the penalty of $10 beyond January 1, 1921, and that full, ample and complete investigation and experience by federal agencies and the carriers have therefore demonstrated the necessity for such rules, regulations and charges being established and maintained, as will tend to promote the prompt release of cars loaded with lumber held for reconsignment, and to discourage abuses of the reconsignment practice "which impose upon the carriers the duty of involuntary warehouseman and operate to the detriment of the general public, petitioners, subscribers and the lumber trade generally."

In his application, Moore contended that the use of such measures on only such commodities wherein such abuses are common, is not discriminatory, unjust, nor prejudicial; and that such measures may fairly, equitably and reasonably vary on different commodities and be made operative to the extent and measure necessary to correct such abuses.

# Personal Notes

The directors of the Chicago & Northwestern Railway Company have appointed A. C. Johnson, who has been general traffic manager, to the office of vice-president in charge of traffic, effective January 1, succeeding H. R. McCullough, who retires on that date after more than forty years of active service with the company. Mr. Johnson began his railroad career in 1884, serving for a brief time as relief agent. He was then out of railroad service for ten years, engaging in other pursuits, to some of which are in part attributed by his friends the broad outlook which has made him known in his business. In 1894 he returned to the railroad fold as a special agent; in 1898 he became general agent in South Dakota; from 1899 to 1910 he was general agent at Winona, Minn., and general freight and passenger agent of the P. R. C. & N. W., a subsidiary of the C. & N. W. lines. From 1910 to 1916 he was passenger traffic manager of the C. & N. W.; from 1916 to 1918 he was general traffic manager; from 1918 to March 1, 1920, while the roads were under government control, he was chairman of the Western Freight Traffic Committee and also served as assistant traffic manager and later traffic manager of his road. On the first of March, when the roads were restored to their owners, he resumed his position of general traffic manager. He was born in Crawford County, Pennsylvania.

The Interstate Commerce Commission is about to lose another one of its more experienced attorneys and examiners. Karl Knox Gartner has resigned, effective January 1. It is not perhaps quite correct to say that the Commission is to lose his services, for lawyers who are specially trained by the actual experience on the inside of the Commission are so equipped that they may still be of benefit to it on the outside. Mr. Gartner practiced law for several years in Louisville, Ky. He went to the Commission in November, 1912. In February, 1914, he was selected to represent the Commission as its attorney in the financial investigation of the New York, New Haven & Hartford Railroad. He again appeared as attorney for the Commission in the Chicago hearing of the private car investigation, in which the packers were required to disclose their interest in certain private car lines. He also represented the Commission as its attorney in the Boston milk investigation, which resulted in the breaking up of the leased car system, which tended to give a monopoly to certain large milk dealers in Boston. Until 1917 he was also serving as examiner in Commissioner McChord's office, and he heard a number of the larger cases assigned to Commissioner McChord. Gartner had seven months' service in France as a field artillery officer, and since his return to the Commission in January, 1919, his name has figured prominently among those of examiners writing tentative reports. He was graduated from Yale in 1907 and from the law school of Vanderbilt University in 1909. In 1915 he published Gartner's Notes to Interstate Commerce Commission Reports in two volumes, and a supplement in 1916. This year he has written a series of articles on the new transportation act for The Traffic World. He will specialize in departmental practice, particularly before the Commission and the income Tax Bureau, with offices in Washington.

W. J. Cipperly, the new president of the Traffic Club, Inc., Troy, N. Y., was born and educated in Troy and began work with the New York Central Railroad Company in 1904, as clerk in the local freight office leaving in January, 1905, to take a position in the shipping department of Cluett, Peabody & Co., Inc. He is still in the employ of that company, having been promoted to superintendent of shipping in 1909 and soon after to traffic manager, which position he now holds. In 1916 he was appointed to the advisory board of the traffic bureau of the Troy Chamber of Commerce, from which he later withdrew to organize the Traffic Club, which, through his efforts, has met with success in all its ventures until now it is recognized as the leading traffic organization in its locality and includes among its members representatives of the leading collar and other industrial concerns of the city and vicinity. He has always been a strong advocate of through package car service and it has been largely through his efforts with the officials of the railroads in this direction that Troy now has a package car service to all the leading cities in the United States.

H. A. Clark is appointed traffic manager of the Ball Brothers Glass Mfg. Company, at Muncie, Ind., succeeding L. A. Clark, who died.

G. E. Littlefair is appointed general agent of the St. Louis, San Francisco & Texas Railway Company and Fort Worth & Rio Grande Railway Company at Dallas, vice Chas. A. Forrest, transferred.

I. L. Colborn has been appointed traveling agent and Donald VanDuyn contracting agent for the Minneapolis & St. Louis at Chicago.

W. H. Wharton, northwestern freight agent of the N. C. & St. L. at Chicago, will be transferred to Nashville the first of the year as assistant general freight agent in charge of solicitation and service. He is succeeded in Chicago by E. J. Stegner, who has been general agent at Kansas City.

The Dayton, Toledo & Chicago has announced the appointment of W. H. Ogborn as general manager, with headquarters at Dayton, Ohio.

J. R. Bell has been appointed freight representative at St. Louis for the Merchants' and Miners' Transportation Company.

J. B. Gibson has resigned as traveling freight agent for the general freight department of the Kansas City Southern and the Texarkana & Fort Smith Railway Companies. He is succeeded by James P. Baker, with headquarters at Houston, Texas.

H. C. Eargle, who has been connected with the traffic department of the Houston Chamber of Commerce for the last three years, has taken a position as traffic manager with the Simms Oil Company of Dallas. Mr. Eargle is succeeded by William Graves.

The Norfolk & Western has announced the appointment of W. H. Vickery, Jr., as supervisor of demurrage and storage for Ohio, with office at Cincinnati.

W. L. White is appointed general manager of the Yosemite Valley Railroad Company, with office at Merced, Calif., effective January 1.

H. C. Barlow, head of the traffic bureau of the Chicago Association of Commerce and chairman of the executive committee of the National Industrial Traffic League, of which organization he was one of the founders and has always been a leading spirit, was the recipient of a handsome watch presented as a Christmas gift by his many friends among industrial traffic men, many of them identified with him in the work of the League.

## DOINGS OF THE TRAFFIC CLUBS

The Traffic and Transportation Association of Pittsburgh held its election of officers December 10 with the following results: President, S. R. Hosmer, of Jones & Laughlin Steel Company; vice-president, H. A. Dietz, of the Delaware & Hudson

Company; treasurer, Geo. E. Gree, of the Union Pacific Railroad Company; recording secretary, R. F. Heil, of the Gulf Refining Company; financial secretary, F. E. Wolfe, of the Santa Fe Railway; custodian, H. L. Geyer, of the Carnegie Steel Company; executive committee—H. A. Cochran, chairman, of the A. M. Byers Company; E. A. Hynes, of the Chicago & Alton Railroad; W. H. Spilker, of the Pittsburgh Terminal Warehouse and Transfer Company; A. C. Schweitzer, of the Carnegie Steel Company, and H. A. Dietz. The association now has a membership of over 400.

The Transportation Club of Decatur will hold a dinner January 27 at the Hotel Orlando. C. C. LeForgee, Decatur attorney, will be toastmaster and the principal speaker will be George A. Blair, general traffic manager of Wilson and Company, Chicago.

The subject of the "Get Together" traffic discussion at the meeting of the Traffic Club of Chicago the evening of December 22 was, "Demurrage, Theory and Practice." The leaders of the discussion were C. W. Crawford, chairman, American Railway Association; J. R. Pickering, superintendent of transportation, C. R. I. & P.; H. W. Butterworth, of the Pere Marquette; W. W. Manker, assistant traffic manager, Armour & Co.; Mr. Ford of the traffic department of Swift & Co., and Robert Ross, traffic manager of J. T. Ryerson & Co.

## CLAYTON ACT EXTENSION

*The Traffic World Washington Bureau*

The bill extending the effective date of section 10 of the Clayton anti-trust act to January 1, 1922, was passed by the House December 18. The Senate passed the bill December 16 and it now goes to the President.

In explaining the reasons why the bill should be passed, Representative Esch, chairman of the House committee on interstate and foreign commerce, said amendment of the section was necessary, but that that could not be accomplished before January 1, when the section would have become operative.

"I think all of those who have examined section 10 of the Clayton act realize the necessity of amending it because of some provisions of the transportation act," said he. "There is clearly a conflict now between section 10 of the Clayton act and the transportation act. Section 10 of the Clayton act has to do with dealings in securities, supplies and other products, while now the transportation act takes care of securities by giving the Interstate Commerce Commission control thereof. That is only one point which necessitates an amendment of section 10. To carry out section 10 as originally drafted would mean a large and an unnecessary expense in many particulars, imposed upon carriers, and would also work an unnecessary hardship, and besides, in the light of the transportation act being in certain respects unworkable. The committee therefore has unanimously reported the House bill, which is identical with the Senate bill, extending the effective date of the section 10 of the Clayton act to the 1st of January, 1922."

Representative Wingo of Arkansas inquired: "Is this the usual annual request for suspending the provision or the law with reference to the joint purchases of railroads? I do not remember the particular promise made to us a year ago, but some kind of promise was made a little different from the regular annual promise about legislation that would cure this permanently. What is going to be done about this in the way of permanent legislation. Ever since I have been a member of Congress this has been an annual performance, and the Record will show that I have exacted some kind of promise that some member of the House would bring in legislation that would cover it, once a year."

Representative Esch, referring to the bill providing for repeal of section 10 and the substitution of a paragraph designed to correct the defects of section 10, said steps had been taken to amend the law, and that the measures possibly would be taken up at the present session of Congress.

W. H. Johnston, president of the International Association of Machinists, has formally requested President Wilson to veto the bill, according to a statement issued by Johnston, December 22, on behalf "of millions of consumers."

Mr. Johnston said that the bill simply legalized a "great steal from the American public for another year." He asserted it was amazing that such a resolution permitting the great railroad interests another year of unlimited opportunity to prey upon the public could have been passed without debate and "without any information as to the sinister intent being allowed to leak out to the public."

"Section 10 of the Clayton act," said Mr. Johnston, "is one of the most important pieces of protective legislation ever adopted by the representatives of the American people. It has been the established custom for railroad officials and directors to be heavily interested in concerns from which railroads buy their supplies and equipment. Through private deals by boards of directors and officials, free from the public scrutiny, prices were paid which meant millions of dollars in profits to these railroad interests. By section 10 of the Clayton act Congress in 1914 intended to forbid these acts of piracy."

Recently Mr. Johnston issued a statement charging that railroad companies, in an effort to defeat the national agreement with the machinists made by the Railroad Administration, have been hiring repair work on locomotives and cars done in other than railroad shops. Reference to this situation is made indirectly by Mr. Johnston in his statement as follows:

"Recent deals between railroads and equipment concerns with which they are allied have come to light. These have involved unwarranted charges for the repair of locomotives and cars which will mount up into tens of millions of dollars. This money has been abstracted from the public. This is not mere hearsay. Evidence as to these contracts through which enormous profits have been realized is at present in the possession of the Interstate Commerce Commission. This shows that work has been charged for at rates two, three and four times legitimate costs as shown by the actual cost of similar work in railroad shops."

Inquiry at the Commission, December 22, as to its having in its possession the data referred to by President Johnston of the International Association of Machinists in his statement condemning extension of the effective date of section 10 of the Clayton act, disclosed that the Commission has some information as to the cost of repair work in railroad shops and in outside shops as the result of a questionnaire sent to the railroads recently. Whether or not this is the information to which Johnston referred is not known. He was not in his office when efforts were made to question him as to that. It was said at the Commission that neither Johnston nor any of the other labor leaders had submitted anything to the Commission in regard to the matter.

## HANDLING OF FREIGHT CLAIMS

"The handling of claims has undergone considerable change with the varying conditions under federal control and private ownership," said U. G. Couffer, freight claim agent of the Pennsylvania System, in an address before the Traffic and Transportation Club of Pittsburgh.

"In considering the subject it is best to divide it as follows: 1. Filing of claims by consignees and shippers. 2. Handling of such claims in the freight claim offices. 3. Claim prevention. Speaking of the first of these three, it may safely be said that a claim that is well prepared and properly supported when presented to the carriers is over half investigated. If this fact were borne in mind, the adjustment of claims would be greatly expedited.

"The adoption of a standard bill of lading by representatives of the carriers, the industries, and the National Industrial Traffic League, and the subsequent approval of this form by the Interstate Commerce Commission was a great step toward uniformity and has helped in securing prompt adjustment of claims.

"The proper filing of claims, giving due consideration to the laws and rules covering their investigation, requires a number of properly executed documents. The first and most important of these is the original bill of lading. Unless this has been previously surrendered to the carrier, it must be presented because it shows, in the form of a contract, the obligations assumed by the carrier under classification tariffs.

"The second document required is the original paid freight or expense bill, which is important for the reason that the notations as to shortage or damage, placed thereon when signed by the freight agent, make it possible for the freight claim agent to pay the bill, except in such cases where the bill of lading does not carry similar exceptions. It is also necessary to file, with the claim, either the original invoice or a certified copy of it to serve as evidence as to the correctness of the claim against the railroad.

"In addition to these three documents there should be filed all available particulars in the way of proof of loss or damage and the value of such loss or damage. If the loss or damage is concealed, statements of the shipper and consignee should be made on the standard form adopted at a conference of representatives of the carriers, shippers, and the National Industrial Traffic League during 1919. The carrier's inspection report should be made out on the form recently approved by the Interstate Commerce Commission, in connection with rules governing the inspection of freight within 15 days as per A. R. A. circular F. C. D. 39.

"At the time the method of handling freight claims by use of forms was first proposed it met with considerable opposition, but their use has now become general, and I think that if any of the industrials represented here are not using them they will find it to their advantage to do so.

"With regard to the second point mentioned, the handling of claims in freight claim offices, it will probably be of interest to describe in what sequence this handling takes place. Upon receipt of the papers submitted, a file back is attached in the recording department. This department stamps the freight claim agent's number upon the papers and makes an alpha-

betical and numerical card index of each claim. At the same time an acknowledgment card is mailed to the claimant for his information in future correspondence.

"The claim is then passed to an investigator, who examines the papers to see if all the necessary documents are attached. If some are found missing, he makes a request for them. When all the necessary papers are at hand an investigation is started to determine whether or not the carrier is liable in the particular case covered by the claim. If it is developed by investigation that the carrier is liable, a voucher is issued and a check mailed to the claimant. In case it is shown by the investigation that the carrier is not liable, the claimant is requested either to submit further evidence or to withdraw the claim.

"The question frequently arises, in the handling of freight claims as to why prompt replies are not made to claim tracers. At a conference of traffic representatives, in 1917, it was discovered that the miscellaneous tracing of claims within short periods of time accomplished very little, and that the time of the freight claim agents could be more profitably spent in the handling of claims than in the handling of tracers. It was therefore decided to delay the issuance of tracers for a period of 90 days from the date of the shipment. During federal control this period was extended to four months, and since the return of the roads to private ownership a number of traffic organizations have reissued circulars bearing upon the subject.

"In general, it may be said that care should be taken to allow sufficient time for the shipment to reach the consignee before starting a tracer. Never, in any case, start a tracer unless advised by the consignee that the shipment has not been received. Promiscuous tracing really tends to defeat the result sought after.

"When a shipment is late in leaving the shipper and it is desired to give it special movement, the best plan is to call the personal attention of the agent to it. He will see that it is rushed in every possible way. When special movement is asked on every shipment, however, this becomes impossible. The carrier's aim is regular, prompt and uniform service for all; and if a shipment is securely packed, fully and properly marked and is accompanied by legible and explicit shipping instructions, which agree with the marks on the package, it will go through promptly and be delivered safely to the consignee.

"The subject of claim prevention, which was the third point mentioned at the beginning of my talk, has always been an important one with the railroads. Prior to the war they had achieved considerable success along these lines, but the dilution of labor immediately following the advent of hostilities resulted in an alarming increase in loss and damage payments. These payments had jumped from $32,376,000 in 1914 to $35,080,000 in 1917, an increase of 8.35 per cent, while freight movements were increasing 37 per cent and earnings 33 per cent. In 1918 the payments were $55,634,150, an increase of 58 per cent over 1917, as compared with an increase in freight movement of only 1.8 per cent. In 1919 the payments jumped to $104,244,000, or an increase of 197 per cent in two years, while the freight movement during the same period increased but 40 per cent. It is estimated that the loss and damage payments for 1920 will amount to between $110,000,000 and $120,000,000.

"This is an economic waste of the country's products as well as a financial loss to the carriers and the shippers. In the case of the carriers it is a dead loss. These figures are appalling when one stops to consider that the United States paid only $7,500,000 for Alaska, the treasure house of the world. The expense of building the Panama Canal was $323,000,000, or $20,000,000 less than the claim payments made by carriers during the years 1914 to 1920, inclusive.

"That the seriousness of this situation is generally recognized by the railroads is shown by the fact that a freight claim prevention congress was held at Chicago, November 15 and 16. This meeting considered the subject not only from the viewpoint of the railroads but also the shipping public, with a view toward securing more efficient operation on the part of the railroads and the co-operation of the shippers in the way of better containers, better packing and marking of L. C. L. freight, the proper loading and stowing of carload freight in cars suitable for shipping, in order to materially reduce loss and damage payments during the coming year.

"If upon arrival of goods the consignee, the railroad representative, or both, feel that the railroads are not responsible for the loss, the best plan to follow is that adopted by one of our large Pittsburgh receivers. It is his plan to charge the shipment back to the shippers. This results in immediate steps being taken by that shipper, as well as the originating railroad, to have shipments started properly. And if shipments are started right and kept right, they will arrive at their destinations intact and undamaged.

"Each shipping department should be provided with the various classifications, so that it will be possible to ascertain the correct class and billing description for each article handled, and what method of packing to use in order to secure the best rating. These articles should also be listed under their correct billing description, having each group assembled under the proper class as shown in the classifications.

"Receiving departments should arrange to have inbound shipments removed from freight houses and cars promptly. This facilitates delivery, avoids accumulations, and secures regular service. All packages in each shipment should be checked against the invoice in order to avoid unnecessary correspondence and claims.

"A number of interesting papers on this subject have been presented. These papers all call for a closer co-operation on the part of everyone using or operating a railroad. A summary of the discussion shows that improvement depends largely on the individual. Everyone must pull together. As things stand—the shipper loses a customer and the railroad loses a patron.

"I can only speak for one freight claim agent. But I have always felt that the shipping public is primarily a patron and only becomes a claimant when necessity requires."

## ATKINS AND HOLDEN SPEAK

At the banquet of the Houston Traffic Club, Dec. 14, George T. Atkins, freight traffic manager of the M. K. & T., one of the speakers, said:

"I spoke in the interest of the shipper for 10 years before accepting railroad service. You have asked me to speak on 'Co-operation between shippers and carriers—what it means to the upbuilding of the transportation system of the United States.'

"In my opinion it means everything. Unless there shall be better team work between the shipper and the carriers, closer co-operation between the man who uses and the man who operates the railroad than we have enjoyed in times past, I do not believe that the strengthening of our transportation facilities is possible, and that is imperative if we are to proceed normally with the commercial and industrial development to which we are all looking forward.

"Experience of the past 10 years has shown conclusively that railroad management is not independent of the public, that railroad policies must be tempered to meet public needs. We have learned from hard experience that the shipper is not independent of the railroad and that the railroad certainly must have the friendship, confidence and friendly support of the shipper.

"There has been no increase in the number of freight cars or in the number of locomotives since before the war, and yet the railroads have been handling an increased volume of traffic. This has been possible because the carriers and shippers have co-operated effectively to secure a maximum use of available facilities.

"Temporarily there is a car surplus. It is due of course to a decline in commercial activity, which we all hope and believe is but temporary. There will surely be a return to the old conditions when more people will want to ship than can be served at one time, unless there shall be a very large expansion of our transportation plant.

"We have all come to realize that to railroad investment must be secured a reasonable return or there will be no railroad investments, so wasteful methods or practices on part of shippers that result in requiring additional equipment will in the end be translated into rates based on higher levels than might otherwise be necessary.

"Our mutual salvation is in co-operation in all that the word means—joint operation. The past seven months of mutual effort have only served to show what can be done once the public and the carriers get together in an effort to solve their difficulties and to provide a means of safe, economical and ample transportation."

J. F. Holden, vice-president of the Kansas City Southern, stressed the fact that transportation is a necessary thing, "for without it," he said, "Houston would not be the beautiful, prosperous city it is and Texas would not be the wonderful state it is today."

He referred to the four periods of railroad activity in this country, the first in the great amount of railroad building in the days following the civil war when the western country was being developed.

"Then came the second period after the roads were built," he said. "Rates were high and everybody was prosperous and foreign capital was sent over to this country by the shipload to invest in railroads.

"Finally the operators of the railroads did things the public did not think was right. There was much speculation and more paper and securities were issued than money went into the properties. Special privileges were given, rebates granted and other things crept in. Texas was the first state, I believe, to say that we want to know where this money is going. The people don't build railroads on speculation any more.

"Then came the time when too many laws were passed against capital. After 1900 less railroads were built and the cost of living began to go up. From 1905 to 1915 was called the distressing period of the roads, when many of them went into the hands of receivers. They could not get along on their income. But at the same time they needed more equipment.

"Expenses kept climbing and then came the war. Some said

the roads were breaking down. It might have been true of some of the eastern roads, but not of those in the western country. The government had to borrow large sums of money and wages began to climb. After the government began to run the roads they had a hard job. Freight and passenger rates were raised, but still not enough to run the roads. It was war time and it had to be done. We are now suffering from the effects of that war.

"Congress has placed the responsibility on the Interstate Commerce Commission to see that the rates are high enough to enable the roads to pay 5½ per cent on their physical valuation. The old bugaboo of watered stock has been killed. Any new issues of securities must now be passed upon by the government. Transportation facilities must be improved, better terminal facilities must be provided. The present suspension of traffic is but temporary. We are coming to a great period of prosperity that will tax the energies of all the roads. They will need more locomotives and cars and other equipment.

"Service is the great word of the world today. We want full loading, prompt loading and unloading. There are 2,500,000 cars in the country and the roads are ordering more and paying 7 per cent for money for these improvements. The service has improved materially on all the roads since they were taken back into private hands. The movement of cars per miles per day is increasing. On our road, the Kansas City Southern, it is up to 41 miles per car per day. Private initiative is what is making us work harder today. You young men before me have the greatest opportunities here in Houston and in the great state of Texas that can be found anywhere in the country and I am glad to see you taking advantage of them. I thank you."

## CLASSIFICATION OF EMPLOYES

George D. Ogden, traffic manager of the Central Region of the Pennsylvania System, in a paper before the Traffic and Transportation Association of Pittsburgh, gave some figures concerning various classifications of railroad employes. He said:

"The most important single class of railroad employes is that of office men. This statement is surprising but it can be fully justified.

"The term of 'railroad man,' as generally used, may apply to a locomotive engineer, fireman, brakeman, trackwalker, section hand, crossing watchman, ticket seller, station agent, gateman, superintendent, division passenger agent, division freight agent, et al. These are typical of the classes most directly concerned in the operation of the railroads and are also representative of the employees who come most directly in contact with the public or whose activities the public has the best opportunity to criticise.

"The majority of people called on to name the preponderant class of railroad employes would probably make the selection from the list named. They would probably be astonished to know, however, that any such choice would be far wide of the mark and that office men greatly outnumber any other single class.

"Every railroad system in the country, at intervals, reports to the Interstate Commerce Commission the number of employes of the various classes on its payrolls, together with its total hours or days of service and compensation. There are 68 such classifications of employes in this report, beginning with the general and division officers and graduated through the various grades.

"The latest report of the Pennsylvania System shows that out of a total of 272,000 officers and employes of all grades, over 38,000 are office men. They exceed by more than 10,000 the next most numerous group—the maintenance of way forces.

"It may interest you to know that the office men outnumber the engineers by more than 4 to 1; firemen 3 to 1; conductors 5 to 1; and officers nearly 30 to 1.

"Further, the total pay of office men approximates $6,000,000 a month, or $72,000,000 per annum, out of a total pay roll for all employes—including supervision—of about $578,000,000 annually.

"Therefore, it is clearly demonstrated that office men, as compared with any other class of employes, comprise a most important part of railroad organization.

"The foregoing statistics furnish a further basis for reflection—that office men constitute a payroll outlay, approximately, 12 per cent of the total annual payroll of railroads; and, with the further refinement of working methods of the railroads, it seems reasonable to predict that serious consideration must be given to the fact that it is their work which makes possible order and coherence and continuity of purpose in organizing and supervising the millions of transactions daily on any of our trunk line transportation systems.

"Without their efforts nothing approaching the modern railroad system could exist; indeed, under present day conditions no, business of any kind can prosper without the aid of systematic records, covering in detail, current business, also cost studies and minute refinement of practices."

## R. R. A. WANTS REHEARINGS

*The Traffic World Washington Bureau*

Applications for rehearing, with a view to persuading the Commission to rescind its orders of reparation, have been made by the Railroad Administration in Nos. 10507, Chamber of Commerce of Houston, Tex., et al. vs. Walker D. Hines et al.; 10602, Procter & Gamble vs. Director-General et al.; Southport Mill (Ltd.) vs. Director-General et al.; 10941, The Texas Cottonseed Crushers' Association vs. Walker D. Hines et al., and 11007 Globe Oil Mills vs. Director-General. They were made by John F. Finerty, counsel for the Director-General.

In the applications, the Railroad Administration takes the ground that the decisions awarding reparation down to the basis of an 85 cent rate on copra were made on deficient and incorrect records and that, if it has the opportunity, it will show the Commission that the rate of $1.125 applied on copra oil was a depressed rate and that while the relationship prescribed by the Commission between the rate on copra and copra oil is proper, the rate on copra oil itself was an attempt to prescribe a relationship between vegetable oil and refined petroleum, while the rate on petroleum itself was depressed by water competition. Mr. Finerty contends the rate of $1.125 was less than reasonable for copra oil. He asserted that that rate was established in relation to a depressed rate of 90 cents on refined petroleum, and that the 90 cent rate on petroleum was one of the schedule C rates as to which the Commission in a number of fourth section orders gave relief.

In his applications Mr. Finerty said the records were insufficient because the director of traffic and his assistants were so busy with administrative matters that they could not appear at the hearings and give the information as to the reasons for the establishment of the rate of $1.125 on vegetable oils, to which the 85 rate on copra, Mr. Finerty admits, is properly related. But he said the $1.125 rate was not established as a reasonable maximum, but as a rate to equalize imports through the Atlantic and Pacific coasts. Mr. Finerty pointed out that when the export and import rates were abolished there was no competition via either the Panama or Suez canals, but that many of the domestic rates from Pacific coast ports were such that business was being forced to the Atlantic ports, which were congested. Another fact developed by that cancellation of export and import rates was that there were no domestic commodity rates from the Pacific ports akin to the commodity rates to and from Atlantic ports.

Taking the 90-cent commodity rate on refined petroleum from north coast Pacific ports as a base, the Railroad Administration established a rate of $1.125 on refined vegetable oils and then made a rate of 85 cents on the copra from which the oil had not been extracted. The Commission ordered reparation to that basis. Now the Railroad Administration desires to show that the 90-cent rate was not a reasonable maximum rate, but one designed to establish a relationship and give the Pacific coast importers a chance to do business.

"No question is of more importance to the Director-General than the question as to whether or not he is to be held liable for reparation because of the subsequent voluntary reduction of a rate either to remove discriminations or to restore relationships where, except for considerations other than the per se reasonableness of the rates, he would have been warranted in removing the discriminations, or restoring the relationships by increasing instead of reducing rates," said Finerty in his applications. "The Director-General respectfully submits that this Commission should not award reparation even where the rate charged was subsequently voluntarily reduced, unless this Commission is convinced that the rate as charged was more than a reasonable maximum rate, or unless actual damage is proved to have resulted from the discrimination, or improper relationships existing before the voluntary reduction. As already noted, the Director-General believes that in this case convincing testimony can be presented to show that the rate charged was not more than a reasonable maximum rate."

The Globe Mills case involves the question of rates on soya bean oil, but the principle involved is the same, the rate on that oil also being $1.125.

### WIS. AND MICH. BUILDING PLANS

The Wisconsin & Michigan Railroad Company, by an order of the Commission in Finance Docket No. 69, has been authorized to rebuild and operate 7.17 miles of railroad between Faithorn Junction, Mich., and Aragon Junction, Mich., in Dickinson county, Mich. The Railroad Administration in February, 1918, ordered the service on the line of road between Faithorn Junction and Iron Mountain, a point beyond Aragon Junction, discontinued, and the applicant in November of the same year removed its rails between Faithhorn and Aragon Junction. The establishment of a factory at Iron Mountain for the manufacture of automobile bodies will make new traffic and make the operation of the entire road, of which the road dismantled is a part, profitable. The entire line of road runs from Menominee to Iron Mountain, Mich.

# The Open Forum

**A Department for the Discussion by Readers of THE TRAFFIC WORLD of Transportation Questions of Interest to Traffic Men**

## TRAFFIC CLUB DISCUSSIONS

Editor The Traffic World:

We have read with considerable interest and approval your editorial in the December 11 issue of The Traffic World, under the caption of "Traffic Club Discussions."

Ever since the organization of the York Traffic Club we have been firm believers in promoting "get-together traffic discussions," and we have now come to the conclusion that they are as necessary to the co-operative ideals for which we strive as is "salt to our very existence." All of our members have by no means joined for the educational benefit they will receive from discussions at our "Local Night" meetings; nor have others joined merely to participate in the social events of the club.

At our "Local Night" discussions we do not deal in local matters only, but discuss questions of timely importance, and with the object of inducing understanding to the various rules and measures imposed, rather than presupposing that we can dictate them.

Both our industrial and railroad members appreciate the mutual benefit to be derived from these frank discussions in the spirit of good fellowship, and are unanimous in their opinion that it has proven a guiding light in solving the local transportation problems of the past few years.

As to just what club was the originator of this scheme will later develop, but the attached notices of our "get-together discussions" of April, June and September, 1919, will bear out our statement that we adopted this plan long ago.*

J. F. Baird, Secretary-Treasurer, York Traffic Club.
York, Pa., Dec. 18, 1920.

*They do.—Editor The Traffic World.

## FREIGHT BILLS WITH THE FREIGHT

Editor The Traffic World:

I wish to call attention to my letter of October 23, 1917, which appeared in The Traffic World of November 3, 1917, page 958, dealing with the importance of showing all necessary information on the freight bills tendered on receipt of freight.

In this communication the writer stated that at the company's thirteen mills located in various parts of the country, he found that local agents were very negligent in presenting freight bills with the delivery of the material—a week late in many instances—and in some cases a cashier's receipt being used. The freight bills, when received, frequently did not carry the necessary information in order for the shipments to be promptly and properly identified. It has always been a puzzle to decipher the point of origin, rate or description of the commodity.

In respect to the freight bills, I wish to call attention to Interstate Commerce Commission Docket No. 5518, 496, 29, I. C. C., which fully covers this subject. The investigation of this report was made by Robert E. Quirk, now chief examiner of the Commission. The report was written by Commissioner Harlan. I wish to quote from this report as follows:

> Numerous informal complaints as well as our general experience with the matter having given us reason to believe that the carriers have failed to establish, observe and enforce just and reasonable regulations and practices affecting the issuance of freight bills and receipts, this investigation and inquiry was instituted by the Commission on its own motion. Its purpose was to determine whether the present rules, regulations and practices of carriers in regard to freight bills embrace any unjust, unreasonable, discriminatory, preferential or otherwise unlawful features.

The report further states:

> Freight bills may be said to have three functions, namely: (a) to serve as a receipt to the consignee or consignor and as prima facie evidence of the payment of the transportation charges; (b) to serve as a receipt to the carrier and as prima facie evidence of the delivery of the property, and (c) to serve as a notice to the consignee of the arrival of the shipment. In addition to these defined functions the freight bill has other uses. It is often a means of identifying the shipment, and to this extent the name of the shipper is frequently essential in effecting prompt delivery.

This report further states:

> It is obviously the duty of carriers in rendering a bill for transportation service to state thereon such information as will enable the consignor or consignee with the aid of the published tariff to verify the correctness of the charges which he is called upon to pay.

I think that this is the most important part of the freight bill, and I believe that if it was made out correctly that a large percentage of overcharge claims would be eliminated. A great many railroad employes (especially the agents) seem to think that the easiest way is the shortest and if the consignee is overcharged or there is any other question same can be promptly cleared up by filing a claim. This idea is altogether wrong because it really entails an appreciable loss in labor and money, the consignee losing the use of the money and the interest thereon and being greatly inconvenienced by having to file claims and handle, in many cases, voluminous correspondence pertaining to same, which with a little more attention to details on the part of the carrier's agent would be eliminated.

This matter should be of great interest to railroads because it would greatly decrease the volume of overcharge claims handled by their traffic department and would have a monetary benefit in that it would permit a curtailment of their overhead expense by making it possible for the roads to decrease the personnel of the claim departments.

In October, 1917, it seemed the opportune time to take this matter up; however, the carriers were turned over to the government and everything died. It seems to me that now is the logical time to again bring this matter before the shipping public as a national subject, because since the carriers have been returned to their owners they have been making a great drive, and are doing everything possible to make a new record.

Obviously it is just as easy to make out the freight bill completely and distinctly as it is to make it out incompletely and indistinctly.

I think the best results would be accomplished if the shipper and railroad got together as much as possible and extended full co-operation, each pointing out the other's mistakes in order to eliminate all of the unnecessary work indicated above and reap the benefits therefrom.

R. L. Stover, Traffic Manager,
United Paperboard Co.
New York, N. Y., Dec. 14, 1920.

## SHIPMENT OF LUMBER FROM CANADA

Editor The Traffic World:

As we have not read anything in the Open Forum regarding the shipments of lumber from Canada, we wish to place before the readers a proposition which we, as large shippers of lumber from Canada, have to deal with. Most all of the lumber that we ship is milled in transit at a mill in Canada and all the milling is handled car for car. The proposition which we have to deal with is as follows:

We ship a car of lumber from Station A in Canada to Station B in Canada for milling and furtherance to Station C in New York state. When shipped the weight was 47,400 pounds. The stock was resawn and dressed at B. All lumber received was reloaded and no lumber added to shipment. The Canadian National Railways charged freight from A to B on 15 per cent of the inbound weight, or 7,110 pounds, to cover shrinkage through milling, making the outbound weight from B 40,290 pounds. When the shipment arrived at C, freight was collected from A to C on 43,100 pounds. As this was 2,810 pounds more than the outbound weight at B, we entered claim for the freight paid on this excess weight of 2,810 pounds. Our claim was returned to us and we were advised that instead of an overcharge there was an undercharge, as the Canadian National Railways' tariff covering the milling of lumber in transit reads as follows: "For lumber dressed and resawn the outward weight must not exceed 85 per cent of the inward weight, but if the outward weight is in excess of the foregoing per centage such excess weight will be charged at the less-carload rate," which in this case would mean that 40,290 pounds should be carried at balance of though rate and the difference, 2,810 pounds, should be carried at fourth class rate.

On receipt of the above letter we corrected our claim, basing the same on the fact that shrinkage did not amount to 15 per cent of the inward weight, or 7,110 pounds. According to the scale weights before and after the stock was milled the shrinkage was 4,300 pounds, on which we should have been charged freight from A to B. Our claim has again been returned and our attention again called to Canadian National Railway's tariff regarding the percentage of inbound weight allowed for shrinkage and excess to be charged at less-carload rate. According to the above we have paid freight on 7,110 pounds from A to B and 43,100 pounds from A to C, a total of 50,210 pounds, while

the original shipment only weighed 47,400 pounds. We have therefore paid freight on 2,810 pounds, which did not exist, and it appears to us that there was a mistake made in weighing this shipment either before or after milling.

We cannot understand how the Canadian National Railways could file their tariff covering the milling of lumber in transit with the above clause unless they were positive that resawn and dressed lumber would show a shrinkage of 15 per cent or more of the inbound weight, as surely they cannot expect shippers to pay freight on what they have not shipped, as in the case stated above.

We would like to have any of the readers express their views regarding the above and, if any of them are shippers of lumber from Canada, we would like to know if they are having the same trouble we are and how they overcome it.

Chas. C. Kellogg & Sons Co.,
Alfred L. Moeller, Asst. Treas.

Utica, N. Y., Dec. 16, 1920.

## INCREASED WAR TAX ON FREIGHT

Editor The Traffic World:

Congress passed the transportation act increasing freight rates that will provide an additional revenue to the railroads of $1,700,000,000 per annum. This increase, effective August 26, this year, was needed by the railroads and Congress, we believe, was wise in passing this act.

However, this act, which only contemplated increasing the revenue to the railroads, automatically increased the war tax on freight charges, the increase in war tax to shippers in the eastern territory being 40 per cent. We cannot believe that when this tax was established in November, 1918, Congress contemplated having it automatically increased 40 per cent two years later, and it appears to us as a thing that has simply been overlooked.

Since Congress, now in session, will undoubtedly take steps to correct injustices in taxation, we are writing to call attention to this discrimination. This recent increase in taxation is a discrimination against the heavy tonnage shippers, for the reason that war tax has not been recently increased on other items; for instance, the war tax on luxuries has not borne any recent increase, but, rather, has had a reduction in taxation because of the reduction in the price of luxuries. This increase in taxation on freight charges occurs when prices on everything else are faling and when the war tax is automatically being reduced on other articles, such as luxuries.

Further, this increase is discriminatory in that the shipper in the eastern territory bears 40 per cent, while the shipper in the southern territory only bears an increase of 25 per cent.

Careful consideration, in our opinion, will show that any tax on freight charges is an injustice in that it is a burden on business that often bears special taxation in so many other ways, and in that way is a duplication in taxation against certain industries. Clearly the $51,000,000 per annum increase in war tax on freight charges (effective August 26 this year) brought about automatically by the transportation act and undoubtedly not contemplated at the time the taxation law was passed, is unjust and discriminatory.

This should not be confused as a traffic matter, but purely as a legislative matter, since it pertains only to the laws governing taxation.

We have seen no discussion of this in any publications and we believe some action should be taken by interested shippers with a view to remedying this situation.

Probably the reason there has been no interest displayed in this heretofore, is because war tax on freight charges seems to be a small matter, being only 3 per cent of the freight charges; but any shipper in the eastern territory paying freight charges at the rate of $1,000,000 per year has recently had an increase in this form of taxation of $30,000 per annum, and there are thousands of shippers now paying freight charges at the rate of $1,000,000 or more each year. Ex Parte 74 has increased the number of shippers paying freight charges to this amount.

S. W. Allender, Traffic Manager,
Monsanto Chemical Works.

St. Louis, Dec. 16, 1920.

## POWER OF U. S. SHIPPING BOARD

Editor The Traffic World:

Although the public has been led to believe that the U. S. Shipping Board has its hands full trying to build up an American merchant marine and devoting its efforts toward developing our commerce on the high seas, it now appears that either the members of the board themselves or some of its subordinate officials have an ambition to take on more work and incidentally write into the shipping act something that we did not put there by Congress, with the ultimate hope of organizing a department of regulation for marine carriers that will rival that of the Interstate Commerce Commission.

It seems highly important that the spot light of publicity be turned on the efforts of the Shipping Board to the end that they may be prevented from accomplishing their design, for the reason that if successful it will be harmful to the interest of the citizens of the United States, and particularly to the operators of navigation companies on our inland waters.

When the shipping act was passed by Congress in 1916 every common carrier by water in interstate commerce was made subject to the authority of the Shipping Board and, so as to prevent any misunderstanding of what was intended by the law Congress defined a common carrier by water to mean a common carrier by water in foreign commerce, or a common carrier by water in interstate commerce on high seas or the Great Lakes on regular routes from port to port. Before this bill was passed the Senate found it was necessary to amend it so that, by no chance, would the law be construed as including the carriers operating on inland waters except on the Great Lakes (see Senate report 689, 64th Congress, first section commission on commerce).

During the war little effort was made by the Shipping Board to regulate either the carriers subject to its jurisdiction or to those carriers operating on inland waterways; in fact, The Traffic World on July 12, 1919, page 65, quotes D. W. McKellar, manager of the rate and claim department of the division of operations, U. S. Shipping Board, as stating that the board had not exercised jurisdiction over port to port rates. This statement was afterward challenged by another employe of the Shipping Board, but it was later explained that the so-called division of regulations had been lost in the shuffle. After the close of the war and with the curtailing of the shipbuilding activities of the board, its division of regulations began to show signs of activity and their ambitions have carried them so far that they are now attempting, by roundabout reasoning, to compel practically every carrier on the inland waters of the United States to file either tariffs or concurrences with them. Of course, this would be only an opening wedge, for, once a carrier submitted to the Shipping Board's jurisdiction, it would only be a short time before the board would be likely to compel the carriers to keep their books and accounts according to their system and require annual reports and, in fact, compel the water carriers not only to be burdened with all of the Interstate Commerce Commission's regulations, but those of the Shipping Board as well; and it requires little argument to point out that if inland waterway carriers have to submit to dual supervision and incur all of the expenses entailed therewith, it will give the waterways movement a discouraging setback.

The Shipping Board has resorted to two methods to get control over the inland waterway carriers. First, it went after carriers operating within the limits of the seaboard ports, particularly in New York harbor, and decided that, inasmuch as the shipping act itself did not specifically define the limits of the high seas, every common carrier operating within New York harbor on regular routes was subject to the board's jurisdiction. It made no difference to the board that other acts passed by Congress had clearly defined the high seas limits as practically the outer edge of the New York harbor, and that the carriers that it was seeking to supervise did not operate in that vicinity; the board ignored decisions of the United States Supreme Court defining the high seas limit at New York. It also disregarded the fact that most of these carriers are operating within the territorial limits of the states of New York or New Jersey and contented itself with stating that until such time as Congress amended the shipping act defining the limits of the high seas the board would assume jurisdiction as it saw fit. The evil in particular of the board's action at New York harbor lies in the fact that there are many so-called tramp lightermen who do not operate on regular routes and who, therefore, escape the board's jurisdiction, and this class of carriers are now in position to ascertain the charges of those carriers operating on regular routes from the tariffs filed with the board and then proceed to cut rates or take the business away by other means.

It may be asked why, if the action of the board is so clearly illegal, carriers submit to the board. This can be answered by briefly pointing out that most of the inland carriers are small companies who are not in a position to conduct expensive litigation. One firm of lawyers have asserted that for a small carrier to carry a case through the courts against the Shipping Board would cost at least $10,000, and this is certainly more than most of the carriers can afford to lay out.

The second method by which the Shipping Board has attempted to take jurisdiction over the inland waterway carriers—especially those that do not operate in the limits of any of the harbors, but on river and other inland streams—is as follows: Section 18, second paragraph of the original Shipping Board act, requires every common carrier by water, in interstate commerce, which, "as has been explained above, refers to the carriers on the high seas or Great Lakes," to file with the board the rates charged for transportation between points on its own routes, and if a through rate has been established for or in connection with transportation between points on its own

routes or points on the route of any other carrier by water, such joint rate must be filed. Now, this means, in plain English, that if a carrier operating from Philadelphia to a south Atlantic port has a tariff naming through rates, say, from a point on the Delaware River in connection with a water carrier to Philadelphia, thence via the coastwise carrier beyond, the joint rate must be filed by the carrier that is subject to the board's jurisdiction, but does not mean that the carrier operating on the Delaware River must submit to the jurisdiction of the board, for there is nothing in the act to require it, and it is perfectly feasible for the coastwise carrier to file a joint tariff without at the same time giving the board jurisdiction over the inland carrier that participates in this joint rate; nevertheless, the Shipping Board now states that all inland waterway carriers that join in a joint rate with either a high seas or Great Lakes carrier must come under the jurisdiction of the Shipping Board.

A great deal of discussion as to the situation of water lines operating on the rivers and interior streams of the United States took place when the railroad act of 1920 was before Congress, and the overwhelming sentiment of the country was against placing any further burdens on these carriers; it is, therefore, the hope now that sufficient public interest can be aroused to prevent this usurpation of power on the part of the U. S. Shipping Board, for, as stated above, if they are successful it will have a most discouraging effect on the movement toward rehabilitating commerce on inland waters.

R. A. Hiscano, General Manager,
Catskill Evening Line.

New York, N. Y., Dec. 20, 1920.

## THE INDUSTRIAL TRAFFIC MAN

Editor The Traffic World:

It appeals to the writer that the criticism of railroad men in general because a few graduate into commercial traffic is decidedly ill timed, especially coming from men who cannot transact the affairs of their business without the whole-hearted co-operation of these same alleged inefficient railroad men.

Personally, my hat is always off to the railroad man. He is a life saver for the traffic man and a shelter in the time of storm when you get him right, know him right, and give him credit for knowing a great deal more than the average mail-order traffic man will ever know if he lives for a thousand years, about his own business; he will give returns on the investment that will make you fall on his neck and weep for joy.

The first thing we old railroad veterans learn is the fact that we don't know a great deal, and that the other fellow is always able to wise us up a little, and that is a great deal more of real wisdom than appears to be taught in our commercial traffic schools, if the expressions in the Open Forum are a good criterion to judge by.

No railroad man earns his salary by sitting at his desk and looking wise, meditating on some far-fetched theory that what he thinks he knows is so well recognized generally that he will be picked off by some astute corporation for a ten-thousand-dollar traffic job. The railroad man is chosen for commercial traffic because he is practical and not theoretical. He is getting results for his employer and drawing his salary, while the mail-order man is hunting for a job that seems lost and trying to figure out why the poor inefficient fool railroad man is holding down a position that he theoretically knows nothing about, while the jobless, brainy, technically trained artist that knows it all, even the wonderful fact that the railroad man is not omnipotent, is not getting even a look-in.

The reason is so obvious that even a stupid old railroad man can see it, and that the employers of traffic men see it is just as obvious. The commercial traffic men absolutely must know the railroad game, from the over-pile in the freight house to a personal acquaintance, if possible, with every man between that and the general manager. The railroad man is equipped in this direction with a knowledge that no school imparts, or can impart, except the school of experience, and even to intimate that a qualified railroad man cannot qualify in commercial lines as good as any other man is simply too ridiculous to draw anything but a smile of commiseration on the weak mind that suggests it. The cold fact is that the railroad men have the life fairly tormented out of them by a class of half-baked commercial traffic men who, half the time, don't know what they are after and eternally pestering someone to get it for them.

The traffic schools are not at fault—they are fine institutions but the same individual ego that prompts the criticism of railroad men makes these gentlemen obnoxious to everybody with whom they come in contact, and that is the principal reason they are not chosen in the business they have selected. We counsel these "would-be traffic men" to go sit awhile at the feet of some railroad Gamaliel, learn some truths that will feel hard—work a while in a railroad office and get some knocks that will be harder; then add what they have learned to what they know and a commercial job awaits them which they should accept and will accept in a chastened and humble spirit.

J. B. Huntington, Traffic Manager,
Holliday Steel Company.

Indianapolis, Ind., Dec. 14, 1920.

It has been like reading a serial story waiting for the next issue with this "Industrial Traffic Man" comment that has been going on in the Open Forum for some time.

I have been with this company for the last ten years, and, previous went through the local office of a railroad of this city, worked on almost every job in that office, and did considerable yard work, both team track and outer yards; was with the company for ten years and will state that the experience I gained has been wonderful help to me in my present position, and I would say that a railroad man with the railroad experience would be a good asset for an industrial concern; but I would not say that without railroad experience he would not be a successful traffic manager, for there are so many various phases of an industrial traffic man's job that come in that he must use his head and good judgment, and things that arise that never come into a railroad's man's life.

I have never taken a correspondence course in traffic and, therefore, will not condemn it. From what I have read and heard of such courses they are very good and have things up to the eleventh hour.

For example, could a man that had been on an O. S. & D. desk for years, or any other so-called "In the Rut," become an efficient traffic manager? No; because his line of work has been in one channel only; but I will say that if the railroad officials would give these men a chance for promotion from one department to another, if they deserved, these men could go into the industrial field and eventually the railroad company would have less claims on account of damages or bad markings, etc., because these men would understand the necessary procedure before their goods left their factories or plants.

An efficient traffic manager can take any man of the right caliber and make him a traffic man, regardless of "no previous railroad experience," because such a man is willing to learn and will listen and ask questions and do things for the betterment of himself and to the vital interest of his employer.

I can't quite agree that all successful traffic men have been railroad men at one time; and, again, if a man has stayed on one railroad job for fifteen or twenty years, especially in a local office, he had better stay, for his ideas are set and he hasn't the snap that it takes in the industrial world.

Where a railroad man is an asset to a traffic manager of a large concern employing a large traffic force, and where he needs a rate man, claim man, etc., then it would be advisable (if he cannot pick from his own force) to get the "special man" he wants, for to try and put a green man at such desks in the rush of business would disrupt his force and lose his company money.

T. M. Smith, National Motor Car & Vehicle Corp.

Indianapolis, Ind., Dec. 14, 1920.

I should like to make a few remarks in regard to the "Industrial Traffic Man," several letters having appeared in your recent publications bearing on the subject, most of them bewailing the fate of the man who has failed to make satisfactory connections by reason of his not having received his education in the hard school of experience.

Probably no one will take exception to the statement that "we learn to do by doing." Regardless of all the theory and printed matter that ever came off the press on a given subject, the man who is armed with this alone when starting out on a vocation is handicapped from the start when placed in competition with people who have had, in addition to the theory and book knowledge of the subject a thorough training in the actual work to be performed.

The impression seems to prevail in some quarters that a railroad man, when spoken of in connection with industrial traffic work, is anyone from a station agent's helper to a general superintendent. When an employer of help for a traffic department inquires for someone with railroad experience, he usually means experience in the freight traffic department (which, by the way, is the department which has to absorb a working knowledge of most of the other departments, such as operating, transportation, claims and auditing, while the converse is not true); and if he selectes a man who makes good, it is not alone because he had the required experience, but also because he was made of the right material. There are hundreds of people with experience in traffic department work who would be eliminated from a list of applicants just as quickly as the person without such experience; for, when judged from the human standpoint, an analysis of the personnel in railroad service will reveal that it is no different from that engaged in other lines of work.

It is my belief, however, that the man who has made a conscientious study of traffic work, and who has a fair share of potential power, would prove a good investment for the

employer of traffic help. But for him to expect equal recognition at the start with an up-to-date, experienced railroad traffic man, I think is asking a little too much.

Chas. S. Gormley.

Crafton Branch, Pittsburgh, Pa., Dec. 14, 1920.

I did not intend making any further comment on this subject, but after reading the article from W. H. Colson published December 11, it appears to me that this item is evolving itself into a huge joke. After all, the whole basis of the subject is "petty jealousy" on the part of unsuccessful aspirants for a traffic position, who consider that, by virtue of their technical training, they should fly high above the heads of the insignificant railroad clerk (as they would wish him to appear).

Mr. Colson has, I consider, put up a very poor criterion for his argument, as the particular railroad men in the cases mentioned are not those who usually obtain traffic or any other positions of any importance, because, in the first place, this type of men never take the trouble to look for a position, being satisfied with their lot, and, secondly, would turn down such an offer because they lack nerve and ambition, and these kind are not all confined to the railroads either.

Any technical training is a valuable asset to a man, but those who have the ability and practical experience are surely better fitted for that particular line than one whose knowledge is based on theory alone. From the different articles which have been published it would appear that the railroad man has no right whatever to aspire for a traffic manager's job, and to the gentlemen concerned it is evidently discrimination to hire a railroad man for traffic position. It is only in recent years that traffic managers have been in demand to any great extent, and it is, therefore, practically a new profession, and for this reason a number of railroad men have begun to sit up, and take notice, preparing themselves either by a closer observance of the work, or by taking up a technical training.

I admit that an extension university training in traffic teaches many subjects with which one would not come into regular contact in ordinary railroading; but I say emphatically that the ordinary man without a railroad training, or some practical shipping experience, cannot, in a year's teaching by theory, gain the experience or have the advantage over the man with years of practical railroad or shipping work.

Niagara Falls, N. Y., Dec. 14, 1920. B. Scrivener.

For the last two or three weeks I have read with a great deal of interest the articles appearing in your paper relative to the industrial traffic man.

As I am an ex-railroad man, I wish to air my views on the above subject. It appears to me that a man who has never had any actual experience in a railroad office is not competent to say whether the average railroad clerk watches the clock or not. It is true nowadays that railroad clerks are working on a better basis than they were about ten years ago. Prior to 1912 the majority of the railroad clerks all over the country were forced to work late hours, six days in the week and part of Sunday, and it is very evident that they had no time to watch the clock. To illustrate this to a man who has never had any actual railroad experience, I will cite an instance of a station accountant that I was acquainted with who had more work than he could possibly turn out seven days in a week. The traveling auditor of his road came in one day and found that his work was not in proper shape and censured him for not keeping it up to date. The accountant told him that he worked so late at night that he met himself coming back to work the next morning.

I note in your issue of December 11 that Mr. Colson states that he is acquainted with a railroad man who has been working for one road over twenty years and is no higher now than he was twenty years ago. There are plenty of people all over the world who have no ambition to get any higher in life, and I suppose he is one of them. I also note that he states that whenever he reads of a case before the Commission that it is always handled by some well-known traffic lawyer. If Mr. Colson will take the trouble to review some of the largest traffic cases that have been before the Commission he will note that they have been handled by commerce attorneys, due to the fact that they were more conversant with procedure before this body and not because that traffic official was not competent to handle. Nearly all large corporations in handling cases before the Commission employ commerce attorneys, notwithstanding the fact that they have expert traffic men.

Personally, I do not hold any brief for any man who has taken an extension university traffic course; however, I will state that a man has to have extraordinary ability to hold a traffic position today who has just received a diploma from one of these universities and not had actual railroad experience.

In conclusion, I would like to say that the large industrial firms of the country evidently know from experience that a man with practical railroad experience and one who has applied himself properly is far more efficient to handle traffic problems of today than a man who is just out of the university with a traffic diploma.

J. R. Burch, T. M.,
Latham-Bradshaw Cotton Co.

Greensboro, N. C., Dec. 15, 1920.

Many young men between the ages of twenty and twenty-five who have been shippers in big industries throughout the country since they were sixteen years of age to the present time think it strange that, after having five or six years' shipping experience, combined with a technical and practical course such as that given by the American Commerce Association, they cannot procure positions which will pay a salary compensate to their knowledge of traffic matters, especially from the industrial standpoint of view.

It seems that whenever one of these young men try to obtain such a position, they are told the following: (1) You are too young. (2) What you suggest in the line of saving is preposterous. (3) We cannot afford such an experiment. (4) We do not know what you mean by the word traffic manager. (5) You have not had enough experience.

These are only a few of the things that are said, without giving the applicant a chance to prove his ability or giving so important a question a second thought.

I am a person who believes in the coming of the future industrial traffic manager, and of the marked help it is going to be to the railroad through his co-operation. Therefore, allow me to express a few opinions on his behalf. The heads of many big industrial concerns do not realize the significance of the title, and it may be well to explain just what a traffic manager is before going further. It is his business to save money on freight going or coming from all points in the United States or adjacent countries. He must know exporting and importing. He also is the connecting link between the carrier and his concern. He must have a thorough knowledge of the following: Classifying, rates, routing, special freight service, claims, traffic forms, charts of various transportation characters, traffic treatises on packing, and tracing shipments via rail, water, express and parcel post, organization, and all related information necessary for the purpose of benefiting his employer's interests.

Many times I have heard men well up in life say that experience is the only thing, and, of course they have all the right in the world to say so, for that is the way they learned. Yet have they ever stopped to analyze that question from this standpoint? The man of today who is awake to the opportunities of life is profiting by the other man's mistakes and while so doing is combining a knowledge far superior to theirs, for it is based on the foundation of all their experiences. If experience counts so much, what is the sense of educating men in such schools as we have today if, after they have attained the required standard in their chosen life work, they have to spend ten or fifteen years at something they have already learned before they can be considered efficient? To me the man who can step in and take another's place and perform the work efficiently is a better man, on this ground, for it shows the thoroughness with which he has done his work in so short a time. Who can say that a man who can do a piece of work through profiting by another's mistakes and his own intuition is not as good as the one who has had to learn by experience?

It seems strange that with all the trying times ahead and the uncertain conditions now existing in the traffic field, so little publicity is given to the question of supplying trained men along traffic lines for the purpose of solving such problems.

There are more traffic men ready to enter the traffic field today than ever before in the history of this country. Yet it seems that one of the greatest hindrances is the lack of interest shown by the big concerns, who are losing millions of dollars annually through their negligence to recognize such a man as the industrial traffic manager. The truth is they do not want to pay the price for such a man, for fear their investment might be a failure. As a matter of fact, a traffic manager would save them many times his salary each year.

Many concerns lay stress on the point that they are unable to reduce the cost of their products, owing to the high transportation charges, but if they would look ahead they would be able to find a way out of their difficulty through the services of one whom they have over overlooked—"the industrial traffic manager.'

Boston, Mass., Dec. 15, 1920. E. G. Colon.

As the writer was one of the first two who remarked on your editorial on this subject, would like to add another word, in view of what those with railroad experience have said.

The point is that, while value of railroad experience is acceded, why absolutely an essential? As to clock watching, this is not the point; for as the writer was for some years in railway express, realize that time is a part of carrier work. Nor is overtime allowed, if one wanted to work it, even without pay, nor can anything be gained by it with either railroad or express officials, who are loth to give merit or recognition where due.

But it seems that a man who has spent money and time to

get into traffic work could be given his start and a chance, even as a lawyer who passes a bar exam and is full fledged; so why not a traffic who is certified likewise on an equal plane, for a new lawyer lacks experience?

We recognize experience, railroad or otherwise, but why rub it in, and hold it against the man who has only technical knowledge and ability which can develop? If this man has desire to serve his employers, to make their interests his, and if he doesn't know all he ought, he may have a way of finding out. Why can't a studious, ambitious spirit be recognized, and others besides railroad men have it?

Personally, I have a thorough express service experience which is equal to, if not better than, railroad, as it is more general in scope of duties which are similar to those of other freight handling. But I was forced to give it up through lack of recognition of training and ability by officials. So I have returned from a long trip, spending money and sacrificing a job to try to get a real connection in one of the best industrial centers, to no avail.

Is the traffic field overcrowded in normal times? I suspect the various schools are billing traffic as a profession.

But even so, if a man has knowledge and some traffic experience only, why can't he have a chance to start and prove his adaptability to such work? A man who is studious and ambitious deserves recognition, as they are few in comparison.

Is it indeed a crime that a man has not done routine in a freight house? Is that crime sufficient to keep him down, when he desires to rise?

The traffic men and employers who read this column should be heard from. The reason they are not, is because they know there is injustice done and cannot rectify it or dare to try.

Railroad experience is an asset, but if some have not got it, why rub it in? Give a technical man a chance to develop and the opportunity to make a living in his chosen field, to live normal like other men in other lines of endeavor.

Taunton, Mass., Dec. 19, 1920. H. C. Walker.

## TRACING SMALL FREIGHT SHIPMENTS

Editor The Traffic World:

I have noticed in reading The Traffic World of December 11 a letter from J. C. Field, Manager traffic department, Chamber of Commerce, Elmira, N. Y. His letter refers to the tracing of small shipments, otherwise known as L. C. L. shipments.

I have carefully read this letter and quite agree with Mr. Field that there should be something done in regard to handling of these shipments, as at the present time an L. C. L. shipment leaves the point of origin for the destination, or some point one or two hundred miles east, and, possibly while this shipment is en route there has to be a handling at the various transfers four or five times, if not placed in a through car. In case this shipment was urgently needed by the consignee, he has no way of trying to locate same only by getting original car number from shipping point, and this car would be carded to the next transfer point. On taking the matter up with the agent at the transfer point it will be found that they possibly had four or five cars going to the same point for transfer, and he will furnish you with all the car numbers, and say that shipment was possibly put in one of these cars. This is poor information, as you have merely a matter of trusting to luck that shipment shows up in one of these cars.

At the present time we have a shipment moving from Connecticut to Massachusetts, of only 200 miles' haul. This shipment moved from point of shipment to a transfer. On taking the matter up with the agent at the transfer, he furnished us with four cars coming to this city. Shipment checked short, and it was necessary that we make a duplication of order to continue our production.

I believe this matter should be taken up with the Commission, and some kind of record kept at the junction point showing material which they have loaded into the various cars, so that in case any consignee wishes to trace he can get the proper information.

As stated before, we agree with Mr. Field, and would be only too pleased to do anything that could be done to get some kind of a record in order to get a proper location and forwarding of all L. C. L. shipments.

H. L. Robinson, Traffic Manager,
Rolls-Royce of America, Inc.

Springfield, Mass., Dec. 16, 1920.

In The Traffic World of December 11 is reproduced a circular sent out by the Elmira Chamber of Commerce, copy of which we received here about a week ago, with request from J. C. Field, traffic manager, that we lend our efforts to a move apparently initiated by him or by his traffic committee to induce or force the railroads to record at transfer points all waybills covering less-carload shipments.

Personally, I think the item almost entirely without merit, and am of the opinion that the plan submitted, if put into operation, would be a very grave mistake, for reasons which I will attempt to explain.

In the first place, what the shipper most desires in connection with less-carload shipments is service, and not waybill records at transfer points. These records, regardless of how complete they might be, would not in any way advance the movement of the particular shipment. They would result in an enormous expense, and in many cases delay to the shipments, due to the fact that the waybills would become separated from the shipments; in other words, not accompany them on the same train in the hands of the same conductor, or, if mailed, not reach the next transfer point or destination with the shipments.

To anyone following the matter closely it is apparent without question that the service given less-carload shipments by practically all railroads of the country has very greatly improved and is in many cases fully up to the pre-war schedule.

Traffic managers, with the co-operation of transportation and operating officials, are working out schedules covering the movement of this class of traffic, which will result in pre-war conditions all along the line, and interference at this time by such schemes as proposed by Mr. Field and his committee, if permitted to gain any particular force, will undoubtedly have the effect of retarding the plans of the railroads, which, as stated above, are being worked out in good shape at the present time.

I could set down here many instances of improved service on less-carload shipments, proving service fully up to that of pre-war period, but consider that unnecessary at this time.

My main objection to the efforts of the traffic committee of the Elmira Chamber of Commerce as outlined above is, first, that it disregards the fact that, as stated above, the question of less-carload service is receiving proper attention and being gradually worked out by the railroads to the extent that pre-war service on this class of traffic will undoubtedly within a short time be accomplished; and, second, that it approaches the proposition from the wrong angle. From practical experience I know, and so does any other practical railroad man, that the plan of the Elmira chamber, if put into effect, would accomplish nothing in the way of service; on the other hand, it would be an enormous additional expense to the railroads and in many cases interfere with prompt movement of shipments.

H. P. Potter, General Traffic Manager,
The American Ship Building Co.

Cleveland, O., Dec. 16, 1920.

The article in the Open Forum under date of December 11, signed by J. C. Field of the Elmira Chamber of Commerce, regarding the tracing of less than carload shipments, is the first published statement we have seen that points out the facts, so clearly stated by Mr. Field, which show the futility of tracing less than carload shipments, which we believe will correct the common impression that something is accomplished by doing this, and thus save the wasted efforts of many shippers, as well as railroads.

In the first place, tracing a less than carload shipment can in no way facilitate the movement of the shipment, and it would be impossible for the railroads to make any attempt to move a particular box of freight faster than another box of freight. Less than carload freight, or "merchandise" freight, is given preferred handling by all railroads—i. e., it has the right of way over all classes of freight except live stock and perishable, and is always handled in the fastest or "red ball" trains. In other words, the whole transportation system of the railroad is bending every effort to move merchandise freight as fast as possible. Merchandise freight at interchange points is always given preferred handling, the cars being placed to transfer platform as fast as possible. Of course, it is not always immediately placed to the platform, as there may be other cars of merchandise at the terminal ahead of the last car received, which, of necessity, causes delay. But, certainly, a shipper's request to trace some particular box of freight should not cause the last car received at the transfer station to be placed ahead of other cars, nor in any way be given preference over all other merchandise. If the railroad would attempt, and if it were possible, to give any particular box of freight preferred handling it would disturb the routine handling and thus delay one or more carloads of other merchandise freight. The railroads cannot and should not make any attempt to give preference to any particular less than carload shipment, for the reason that each shipper is entitled to the same service, and because attempting to do this would delay many more shipments.

Probably 10 per cent of merchandise shipments are actually needed in a hurry, and if the railroads had any efficient method of giving preferred handling to any one shipment they would not only be called upon to give preferred handling to 10 per cent of all merchandise, but would be requested to trace nearly everything; for what shipper would not want all his shipments given preferred handling?

Less than carload tracers simply bring forth a recital of past events and do not, never did and never will hurry arrival of goods. Mr. Field has shown the method of handling a less than carload shipment. Let us see what the method is of handling a less than carload "tracer." The agent at point of origin

receives a request from the shipper to trace his shipment of a certain date. The agent (or in a larger terminal, a very minor clerk) goes through the waybills, or record of waybills, for that date and secures his waybill number and car number. He then writes the agent at destination that the shipment referred to is covered by his waybill number and that the shipment was loaded in a particular car, and asks the agent to advise delivery. The agent at destination (when he gets time to do it) turns to his record of the waybill referred to and then advises the agent at point of origin one of two things; either that the shipment has not been received and delivered, or that it was delivered on a certain date. This correspondence is usually confined to the reference being scribbled on the bottom of the shipper's letter and forwarded back and forth. The only variation of this procedure is that in some cases the agent at point of origin sends the information to the junction, or transfer point, when the agent at the junction point simply reviews past records and advises either that the shipment passed, or that it did not. This, however, is all that can be done and all that can be expected of the railroads, but what has this procedure done to facilitate the movement of the shipment? Absolutely nothing.

Of course, sometimes, the shipper desires to "establish delivery"—i. e., for certain reasons he may want the railroads to tell him whether or not they have delivered a certain shipment. This is not a tracer, however, but simply information requested, which should be furnished by the railroad; but this is necessary only in exceptional cases, as the shipper can more easily secure the information as to whether or not the shipment has been received by asking his customer direct.

None of the foregoing applies to carload shipments, which can be and are facilitated by tracing, especially telegraphic tracers.

We do not believe the railroads can facilitate any less than carload shipment by tracing it. We believe that they are doing all possible to give preference to the movement of less than carload freight. We do not believe they should be expected to give preference to any particular shipment, and that if they had any method of giving preferred handling to any particular shipment each shipper would want all of his shipments given preferred service, and we would be just where we started—all of the shipments being handled alike.

The surprising thing about this whole matter is that so many people believe, and so many have a vague conception of shipments being separated from the great mass of merchandise and given some preferred handling when they are "traced." Many railroad representatives and industrial traffic managers are "going through the motion" when requested to trace shipments, either through ignorance or because they have probably learned that it is easier to "go through the motion" than it is to make this lengthy explanation of the workings of the less than carload "tracer," and probably not be believed after they make it.

The thing to do in case of less than carload freight shipments, express shipments and parcel post shipments is to wait a reasonable length of time for delivery, but not too long; and if not delivered within a reasonable length of time, file a claim. This claim will then become a "tracer," handled by an experienced claim investigator, and the shipment will be traced—i. e., the handling of the shipment will be reviewed, and if misloaded may be located and forwarded to destination; and if not located the claim will be promptly paid, at least sooner than if investigation were handled as a "tracer," by a "tracing clerk."

S. W. Allender, Traffic Manager, Monsanto Chemical Works.
St. Louis, Dec. 20, 1920.

## POINDEXTER STRIKE BILL

*The Traffic World Washington Bureau*

Establishment of a "Bureau of Legislative Information" by organized labor to keep track of bills affecting labor was suggested Dec. 17 at a conference of railroad and other labor leaders with members of the Senate and House friendly to labor, according to W. H. Johnston, president of the International Association of Machinists. He said the suggestion resulted from the passage of Poindexter anti-strike bill without its opponents being aware that it was up for consideration. He also said it was agreed to hold another meeting to bring about better coordination of the "liberal forces of the country with their representatives in the House and Senate."

Senators favoring the Poindexter bill believe it will be passed again in the Senate when it comes up for reconsideration, while its opponents say it will be defeated in the House.

Charges by the opponents of the Poindexter anti-strike bill that the measure was "slipped through" the Senate do not stand up in the face of the record. What happened was that those senators who make it a point to protest vehemently against legislation of the character of the Poindexter bill were "asleep at the switch." The bill was on the Senate calendar. There was no effort to hasten action thereon or to have it considered when its opponents were not on the floor. It came up as a matter of regular procedure.

The bill was passed without protest from Senator Gronna, of North Dakota, who is listed as an opponent of anti-strike legislation and who was on the floor when the Vice-President inquired whether there was any objection to passage. In such instances one senator may object and the bill goes over for further consideration. Senator Poindexter, Senator Smoot, and one or two other senators were present. Senator Poindexter did not say a word or appear to be interested when the clerk was reading the bill. The newspapermen in the press gallery did not believe the bill would go through without objection, looking for some senator to step into the Senate chamber and voice objection. But there was no objection and the bill passed. Some time later Senator LaFollette, being advised of the passage of the bill, entered the Senate and said:

"Mr. President, while I was temporarily absent from the floor I understand the bill (S. 4204) to prohibit interference with commerce was passed without objection in the Senate. I wish to enter a motion to reconsider the vote by which that bill was passed and to have it pending. The bill has not yet been transmitted to the House, I understand."

"The Chair understands it has not," said Senator Henderson, presiding. "The motion to reconsider will be entered."

Senator Johnson, of California, a little later, came in and said:

"While some of us were absent a brief period ago, Mr. President, the bill S. 4204, introduced by the Senator from Washington, I understand was passed, the bill which in ordinary parlance makes it a crime to strike. Some of us are interested in the bill, and I understand from Senators that a motion was made by the Senator from Wisconsin subsequently to reconsider it. I want to be certain of the standing of the matter."

"The bill is on the calendar for reconsideration," said Senator Overman, in the chair. "There is a motion to reconsider pending."

"Mr. President," said Senator Poindexter, "in order that there may not be any possible misunderstanding about the matter, may I inquire, as I did not understand the Chair quite clearly, whether he said that the bill was reconsidered. My understanding was that there was no action taken."

"No action was taken. A motion was entered to reconsider, and it is on the calendar," said Senator Overman.

The names of the senators and representatives who conferred with the labor leaders December 17 in regard to the Poindexter bill and other matters were not made public but it is understood that among those present were Senators LaFollette, Norris, Gronna, France, Walsh (Massachusetts) and Representative Frear of Wisconsin.

The first discussion on the floor of the Senate as to the status of the bill occurred December 20 when Senator Poindexter indicated that unless action was taken on the La Follette motion to reconsider the passage of the bill he would make a motion to table the La Follette motion. Under the rules, such a motion would not be debatable, and the senator said he preferred to refrain from making it. No definite action, however, was taken in the matter on that date.

"There has been a great deal said, so I am informed," said Senator Poindexter, "about the manner in which the bill was passed. I call attention to the fact that I was present at the time the bill passed, but made no motion or statement in regard to it. It passed upon the machinery of the consideration of the calendar of the Senate."

"May I ask, because so much has been said about the method in which the bill was passed, how many senators were present in the chamber at the time it was passed?" asked Senator Kenyon of Iowa.

"I have no idea how many senators were present," replied Senator Poindexter. "I was present myself."

"I have heard it stated there were only three senators present," said Senator Kenyon. "I had been in the chamber previous to that, but was called out, and when I got back the bill had been passed."

"There were the usual number present," said Senator Smoot of Utah.

"The usual number?" queried Senator Kenkon. "There must have been five here then. I had hoped that regardless of any one's feelings about the bill and its merits and the final passage the motion to reconsider could be agreed to, so there might be a discussion of the bill before it was passed."

Senator Poindexter said he was willing that there be full discussion of the bill upon reconsideration. Referring to the provisions of the bill itself, he said:

"I wish to say, as I was proceeding to say a moment ago, that there is nothing in the bill which imposes any penalty upon anyone for quitting his employment. That is true whether he quits as an individual or as a member of an organization; whether employes quit singly or quit all together. There is no language in the bill that imposes any penalty on anyone for quitting his employment. There is, however, a penalty provided in the bill against those who interfere with others who are employed in interstate commerce with the purpose and intent of impeding or obstructing such commerce, or who, by threats or intimidation or by force or violence, interfere with others who are engaged in interstate commerce, or who agree or conspire together with the intent and purpose of impeding or obstructing

interstate commerce. Those are the acts which are penalized by this measure, and not the mere quitting of employment.

"When the proper time comes for the discussion of the bill I hope to have an opportunity of briefly stating to the Senate the importance of imposing penalties for acts of that kind, with the view of setting up the same method of decision or administration of economic disputes between classes in the country that is now set up for the settlement of disputes between individuals in the community, who are not allowed to fight out their differences upon the street, to the inconvenience and the suffering of the community as a result. The purpose is to substitute the law for force and violence, and I assume that that is the central principle upon which this government is founded."

Senator Robinson of Arkansas, who was credited with having drafted the anti-strike section of the Cummins bill at the last session, urged that full discussion be given the Poindexter measure.

"This bill relates to an issue of great importance, and the Senate, if it wants to pass this bill, ought to fight it out," he said

"Speaking quite frankly on the subject, I desire to say there is not a possibility that the bill will pass both houses of Congress and become a law during the present session of Congress. The body at the other end of the Capitol declined to accept a similar provision during the last session of Congress. A compromise was effected in the transportation act by which government tribunals were created to adjust controversies arising between railroads and their employes. Those tribunals have proven not completely satisfactory, but effective. What is the advantage to this body; what is the advantage accruing to the country to insist upon a snap judgment in a question of this importance; a question that is contested and that every senator here knows is contested? Why renew agitation of anti-strike legislation when no strike is impending? Why not try out further the system of adjustment now employed?

"I neither express nor imply criticism of any senator who was present and failed to raise an objection; technically speaking, it was the duty of those who were opposed to the bill to exercise their privilege and make the objection; but the senate spends days and even weeks in discussing unobjected bills; it has consumed this entire day in the discussion of a measure for which every senator voted, and I do not propose to put myself in the attitude of insisting upon the right of discussion in the senate upon bills that are not objected to and of denying that right upon bills that are objected to.

"So far as I am concerned, I shall vote and fight for the motion to reconsider, and it will not make me friendly to the measure to see its advocates insist that those who are opposed to it shall be denied an opportunity of either expressing or registering their opposition merely because they had no actual notice that the bill would be called up.

## GOVERNMENT SHIP OPERATION

"Here and now I desire to go on record as unalterably opposed to government operation of this fleet," said Admiral Benson, chairman of the United States Shipping Board, in an address December 21 before the Municipal Club of Brooklyn at the Lawyers' Club in New York City, referring to the government merchant marine.

"Government ownership and operation at best is under great handicap when commercially opposed by private operation," he said. "A government owned fleet dies due to the keen competition it is forced to meet unless constantly aided by large appropriations from public funds. Fortunately our fleet has been operated in the main by able operators, who, in addition to operating their own ships, undertook to act as agents for us. Thus in the allocation of our government owned tonnage we were enabled to operate in a semi-private manner, but always handicapped by the heavy overhead brought about by fiscal regulations considered so essential in the transaction of government business. My predecessors endeavored to cut off duplication of effort whenever it existed. Mr. Donald and myself, constituting the old board for about five months, made it our business to continue this policy and to eliminate all lost motion. But of course in an organization which reaches to all parts of the globe the task is one that entails months of hard study and business resourcefulness. At the present time we are giving close study to the first reports which have reached us from the committee which has devoted much time to the study of efficiency of our ship operators. How many of these operators may fall by the wayside due to the efficiency is hard to say, but the new board is determined that the time has arrived when the men acting as our agents must measure up to the task. We have been patient knowing that many were acting as pioneers in a new calling. The lull in the freight market has afforded an opportunity to speed up the work of its efficiency committee which has been investigating for several months."

Reviewing the growth of the American merchant marine, Admiral Benson said

"This is a record Americans can take pride in; it is an evidence of what the American shipbuilder contributed in a material way for the three billion dollars which we spent in the construction of ships. There has been so much loose talk. relative to large sums of money spent, that many well-meaning persons have been led to believe that this amount of money appropriated by the United States government for the building of ships was spent without thought of return, and without an effort to control. I do not believe that in the face of the vast accomplishment, for which all Americans can properly take credit, anyone desirous of knowing the facts will deny that we have the physical possession of the largest single fleet of merchantmen in the history of the world, the direct result of this expenditure of three billion dollars. This fleet has been profitably employed in the development of our foreign trade, but primarily with the thought of continuing the Humanitarian Role that has made America stand out as a country willing at all times to give the other fellow a chance. While engaged in vast relief work and in the task of carrying overseas large consignments of supplies destined for war-ridden countried, we piled up a huge amount of charges for earnings which are still owing and which it will take a long time to fully collect.

"Those who are inclined to pick isolated instances of vessels that failed in reaching the high standards we have set for them, overlook the splendid rating of vessels obtained both from the British and American Lloyds. They frequently, in a desire to present some controversial phase of the period when this country was in the throes of war, enlarge upon circumstances, of which they may be fully acquainted, but which only affect a small part of the big task. These controversial matters, when aired in the public press, are oftentimes, unfortunately, the means of spreading erroneous impressions.

"I do not want anyone to misunderstand me. I am not shirking my responsibility. I do not desire to explain any wrongdoing. If I had my way, and I am using every effort in that direction, I would have all wrongdoers who did anything criminal or who took unfair advantage in a commercial way sent to prison, after due conviction. But there is the rub, gentlemen, so often forgotten by those who are earnestly bent on righting wrongs by means of exploitation.

"Placed in a position like I am, it is necessary to take responsibility after due judgment. If, in my judgment, it is most essential to build the ship and in doing so expeditiously increase the cost by meeting labor demands, the methods of contractors for increased compensation, it is after all a matter of judgment. Later developments may show that in the rush for ships, men the Shipping Board depended upon to act as checks upon those who were spending government funds failed to do their duty. It may develop that men to whom they reported failed to investigate conditions. There is no denying the fact that in an enterprise involving the placing of contracts averaging about one hundred million dollars a week during a six months' period, men seeking easy money found their opportunity. These men, if they were found out and duly convicted, at the time would have set an example to others likely to fall. Our department of investigation reported 2,500 cases that they investigated, from the time we began our ship construction up to the end of this fiscal year. We sent a number of these to the Department of Justice.

"Of course, you gentlemen readily understand there is no need for me, as chairman of the Shipping Board, to defend my predecessors. I have frequently gone on record in unmeasured praise of the work of Edward N. Hurley and John Barton Payne. I do not question the sterling Americanism of William Denman and General Goethals, who in the beginning took every responsibility upon their shoulders. Seven months ago when I entered upon my duties the great construction task these men had started and carried forward was approximately 35 per cent complete. But going back to the day when these men first set out with this world work ahead of them, looking at what has been accomplished, it is amazing to me how little actual wrongdoing developed during this period. A man would be unsound in his judgment if he expected such a large construction job without losses due to thefts of every description, including an occasional wrongdoer being found in positions of trust.

"I wonder if it ever struck those who have been led to throw up their hands in horror at sensational headlines, that if the Shipping Board had failed to build ships what would have happened to our exporters shortly after trade was resumed with foreign countries. The fact that we had a fleet of splendid seagoing vessels stabilized ocean freight rates at a time when they were soaring to heights almost unbelievable. For the first time in about sixty years America has a delivery system overseas, sailing under the American flag and permitting fast dispatch of our productions to other lands.

"This fleet controlled by the Shipping Board earned, in gross revenue since it began operations, more than one billion, and while we cannot show a profit as large as probably would have been the case if the fleet had been privately owned, the fact remains that this one billion actually stayed in this country, and had we not possessed a fleet of ships built by the government this one billion would have had to be spent for the use of foreign bottoms, plus the added cost that always comes from a monopoly.

"You gentlemen must not forget that had there been no

nation able to take up the position Germany occupied when her maritime power was literally wiped out, ocean-carrying tonnage would have been monopolized by Great Britain, whose crying trade needs naturally would have come first.

"Recently we made a most careful survey through our industrial relations divisions and found it necessary to sound warning to all seafarers of our merchant marine. While I am naturally optimistic, I must point out that there exists in maritime affairs at this time a condition which shows its deadly effect by the slackening in the volume of freight we are carrying in our ships. This is due primarily to world trade conditions. Thus we are forced to admit there has been a serious drop in the movement of ocean freight, with a consequent tying up of many privately owned vessels, as well as ships controlled by the Board.

"Our operators have suffered. We should not hesitate because of this. We should not falter because foreign competition has become so keen. We should not lose faith because with deadly persistency our trade foes take advantage of every opportunity to create an impression that American ships are not seaworthy, and that an American merchant marine is a mere dream.

"On the contrary, those who study conditions with a full possession of facts know that America has a rehabilitated merchant marine, ranking second to any in the world in point of numbers and equal to any as to efficiency, made up almost wholly of ships recently constructed. Now of all times it is strikingly evident that if we are to get maximum results with minimum expenses, every man in our merchant marine must measure up to his part, and the spirit of co-operation prevail in every department.

"American business men must also measure to the standard they set during the war if they desire a merchant marine. That hearty support must be continued which the Shipping Board has so generously received from business men who have made up their minds our merchant marine to be permanent must be supported. But support must also come from those who are only now beginning to see how dependent we are in time of national stress upon a merchant marine adequate to act as a naval auxiliary in time of war. It is a pleasure to learn that since my recent appeal, masters and ship engineers of our ships as well as port captains and port engineers have taken hold of things with an assurance of speeding up the operation of vessels. There has been evident an increased interest in seeing that repairs are properly and speedily made to vessels in their charge. This is most encouraging, but it will be necessary for everyone aboard ship to exercise full precaution to see that the ship he is on is maintained in seaworthy condition, in order to effect quick turnaround and to bring a reduction in repairs. The seamen have responded to my recent appeal in this respect most generously. Already we note a new spirit among many who are now trying to do necessary repairs within working hours, thus avoiding extra expense. It is also a sign of good omen that men and women engaged in work of the administrative departments have increased their efforts to promote efficiency.

"When the men and women of America understand fully the history of the Shipping Board, what brought on its inception, its development, and realize what ships we have as the outcome of the Shipping Board activities, they will then see another side of the picture. I wish I could create in the mind of every one first of all the real situation which this country confronted when the Shipping Act shaped into law. If the American people could only have brought home to them the sense of security they may now have due to the splendid fleet of merchant ships now owned as compared to the mere skeleton or rather shadow of a merchant marine possessed before the war, they could be little affected by the fault-finding attitude always existing after a great work has been accomplished."

## COAL FOR THE NORTHWEST

*The Traffic World Washington Bureau*

An attack on bituminous coal operators in connection with the movement of coal to the northwest this season, made by John F. McGee, of Minneapolis, Minn., formerly state fuel administrator of Minnesota, was answered by J. D. A. Morrow, vice-president of the National Coal Association, in a letter to Governor Burnquist, of Minnesota, under date of December 18, according to a statement issued by the coal association in Washington, December 22.

Mr. McGee made his charges against the coal industry in a report submitted to the Senate committee on reconstruction and reproduction. At the suggestion of Governor Burnquist, it appears, Mr. McGee made the report public in Minneapolis. Governor Burnquist said the people of Minnesota were entitled to know "just what happened in Washington and in the Lake Erie coal fields during the present season," in connection with the publication of the McGee report.

Mr. Morrow declared that the people will not get the facts from the McGee report and added:

"In this connection it will clarify the situation if Judge McGee will explain whether he was interested in this season's coal supply for the Northwest merely as a public official or as the paid representative of certain coal consumers of the Northwest and whether throughout this matter he has occupied the position of a disinterested public official, or whether, in order to earn a fee, he has acted rather as a purchasing agent trying to obtain coal for his principals without regard to the needs of other coal consumers in other parts of the United States.

"I note the charges of bad faith against the railroads. Doubtless they will treat these charges as they deserve. Let me say that I personally know that Daniel Willard and the presidents of other lake coal carrying roads spent days of the hardest kind of work, in the full and frank recognition of their responsibility, trying to move all the coal to the Northwest and elsewhere which was needed in the public welfare. It is largely due to their efforts that your people are warm today.

"Judge McGee is quoted as saying 'the full supply of coal for the Northwest had been contracted for at \$3.50 a ton.' That is not true. The list of 'contracts' to which he refers included mere promises to ship certain tonnages to the Northwest provided other prior claims and obligations upon the producing companies left such tonnages available for Northwestern shipment.

"Moreover, all of these contracts were conditional engagements. Every coal producer, in making his contracts, always provides that he will ship whatever tonnage is named in the contract provided that 'fires, floods, strikes and railroad conditions do not prevent.' Every one of those lake contracts to which the Judge refers was subject to these customary provisos affecting the shipment of the coal. Thus the impression that the Northwest last spring bought 13,514,200 tons of coal at \$3.50 per ton, without any 'ifs, ands or buts,' is grossly misleading.

"Furthermore, nearly all the coal producers having Northwestern coal contracts also had contracts with other customers. In order to insure fair treatment it is customary for the producer to agree that if fires, floods, strikes or lack of cars prevent him from shipping the normal output of his mine, then he will distribute what he does produce proportionately on all of these contracts so that the loss in shipments will fall equally and fairly upon all his customers. The producers, therefore, by these very contracts which the Judge cites were prevented last spring from preferring shipments to the lake over their other contract customers.

"The Judge gives the impression that all these contracts were evaded, disregarded, repudiated and abrogated, saying that 'the only talk I heard at Cleveland was of high-priced coal ranging from \$7.00 to \$12.00 per ton.' To borrow from the Judge's language, this impression is 'villainously' false.

"So far as I know, the Judge gives no evidence to support his broad assertions about abrogation of contracts by coal producers. Let him present the name of the companies involved, if he knows any.

"It is also insinuated that contracts between the coal producers and consumers in other sections of the country were abrogated indirectly through the Interstate Commerce Commission Service Order No. 10 in order that these producers might thereby ship high-priced open market coal to Lake Erie ports as a means of 'looting' and 'robbing' the Northwest. These insinuations are beneath contempt. Because of the demoralized railroad conditions already referred to, resulting from the out-law switchmen's strike and two years of Government control and operation of the railroads, the coal mine operators having contracts to ship to the lake had lost so much production and had got so far behind on their shipments on the Northwestern contracts, that the dock companies had to buy great quantities of coal in the market from other producers to supply the Northwest. Moreover, these other producers had to be prevented from selling this coal elsewhere in order to absolutely insure a supply for the Northwest. Order No. 10 had that effect but it did not abrogate a single contract for Northwestern shipments nor relieve a single coal operator in the slightest degree from any obligation to ship under such contracts. This was clearly understood by the coal operators, the railway executives, the Interstate Commerce Commission and Judge McGee at the time the proposed order was discussed before representatives of the Interstate Commerce Commission prior to its issuance.

"The Judge says that the National Coal Association refused to agree to a special assignment of cars to the mines having contracts or orders for lake shipments as a relief plan. He is right. However, he does not explain to you why the National Coal Association refused, and you ought to know. An illustration will make it clear. Having in mind the needs of all your consumers in the Northwest, could you agree to a plan under which the mines having contracts to furnish, say Judge McGee's client with coal, should receive a full supply of cars daily, taking the cars needed for this purpose away from the mines having contracts to supply your other Minnesota consumers so that the mines serving the Judge's clients would be operated 6 days a week, and the mines serving other coal consumers of your state would be operated two or three days a week? That illustrates the working of assigned car plan. Moreover, the

coal miners in two important lake coal producing districts were threatening to go on strike if an assigned car plan was adopted, because of the resultant discrimination in working time between the mines with such special car supply and the other mines. The Judge may have been willing to risk such a disturbance of coal production, but the Interstate Commerce Commission, the Railway Executives, and the coal operators would not take any chance of coal strikes when the Northwest was as short of coal as it was last July.

"Now a word as to prices. As already explained, it was necessary to make up the deficit in the Northwestern supply by purchases in the open market. The Judge gives the impression that Service Order 10 compelled the Northwest to pay more for its open-market coal than similar coal cost other buyers. This is flagrantly false. In fact, as the Judge well knows, the Interstate Commerce Commission, the railways and the National Coal Association were attacked because everybody knew that the Northwest could buy its coal under Service Order 10 cheaper than other consumers could buy similar coal in the open market. The Judge himself knows that the Public Service Commission of Ohio bitterly assailed Order No. 10 on precisely this ground, claiming that it permitted the people of Minnesota, the Dakotas and Wisconsin to buy Ohio coal at cheaper prices than Ohio people could buy it. This was due to the fact that mine operators were compelled by the order to ship a certain amount of coal to Lake Erie ports every day, and were notified that if they failed to ship this coal or failed to sell it promptly upon arrival, cars would be withdrawn from their mines and they would be prevented from shipping any coal anywhere to anybody. Under these circumstances the order in question, instead of increasing the coal bill of the Northwest, actually reduced it."

## COAL PRODUCTION REPORT

*The Traffic World Washington Bureau*

With the closing of the lake season in the week ending December 11, the output of soft coal reached the highest point in the year—12,865,000 net tons (estimated). This record has been surpassed only three times in the history of the country—in July and September, 1918, and in October, 1919, according to the weekly report of the Geological Survey of the Department of the Interior of December 18. The car supply has improved decidedly, the report said.

"The week of December 11 was the tenth in a period of sustained heavy production, which has been equalled but once before, and that in the summer of 1918 when the zone system, car pools and other war-time measures designed to stimulate production were in force," the Survey said. "The present rate is far above that in the corresponding period in any of the three years preceding. It is the more remarkable because, effective November 29, the last measure of priority in the use of open-top cars was withdrawn. Telegraphic reports to the American Railway Association indicate that loadings on Monday of the present week (Dec. 13-18) were very heavy, amounting to 45,144 cars, but that they declined sharply to 32,149 cars on Tuesday."

The cumulative production for the calendar year up to December 11 stands at 525,403,000 net tons, or at the rate of 1,799,000 tons per working day. If this rate is continued for the sixteen working days remaining at the time of the report, the total output for 1920 will be 554,000,000 tons. The year 1920 is now within thirty-one million tons of 1918, and is ahead of 1917 and 1919.

Dumpings of soft coal at the lower lake ports totaled only 52,088 tons for the week of December 11, as compared with 473,915 tons the preceding week. The cumulative movement for the season totaled 23,667,000 net tons, of which 22,408,000 tons were cargo and 1,259,000 tons were vessel fuel. This was less than the record of any of the four preceding years, except 1919, which it exceeds by 766,000 tons. In 1918, the tonnage was 29,749,000 and in 1917, 27,616,000.

Movement to tide continues at the rate of a little over a million tons a week. The total for the week ended December 12 is reported to the Geological Survey at 1,040,000 tons, or at the rate of 4,450,000 tons per month. Exports continued to decline and coastwise shipments to New England to increase, the exports totaling 274,000 net tons and New England coal, 226,000 net tons in the week ended December 12.

A very heavy decrease marked the all-rail movement to New England during the week ended December 11. According to reports made to the American Railroad Association, 3,651 cars of bituminous coal were forwarded through the five rail gateways, Harlem River, Maybrook, Albany, Rotterdam, and Mechanicsville. Compared with the preceding week, this was a decrease of 1,560 cars, or nearly 30 per cent. Shipments during the corresponding week in 1919 were at a very low point because of the great strike and numbered only 111 cars; in 1918 the total was 2,559 cars.

Imports of United States coal into Canada, during the first eleven months of 1920, compare favorably with receipts during similar periods in the past six years. Reports of the Canadian Department of Mines give as the total quantities received, anthracite, 4,537,000 net tons, and bitumimous, 14,160,000 net tons. Anthracite tonnage has equaled 1919 and is well ahead of all other recent years except 1917, which year it is behind by 437,000 tons. Receipts of bituminous coal in 1920 have been surpassed by only two years during the past six. The cumulative figure for 1920—14,160,000 tons—is 129,000 tons behind 1917, and 1,511,000 tons behind 1918.

## CONSTRUCTION APPROVAL REFUSED

*The Traffic World Washington Bureau*

The first denial by the Commission of an application for approval of the construction of a railroad of considerable length was made in its order in Finance Docket 29 in the matter of the application of the Michigan Northern Railroad Company for a certificate of public convenience and necessity to construct 102 miles of railroad between Lansing and Midland, Mich.

The applicant was organized in May, 1919, to build a railroad some 235 miles long from Lansing to Bay City, Mich., but its plans were subsequently modified to provide for a line from Lansing to Midland, with a 17-mile branch from Pleasant Valley to Mt. Pleasant, the whole line, including the branch, to be about 102 miles in length.

"The territory proposed to be served is well settled and contains some of the best agricultural land in the state," the Commission said in its report. "The portions which have had the advantage of railroad transportation, have attained a high state of development, but sections not now served by railroad have not experienced a corresponding growth, and it is in those communities that the demand for the new line is most insistent.

"It is estimated from detailed study of the traffic said to be available to the proposed line the applicant would obtain a total freight movement of about 655,000 tons during the first year of operating after completion of the line, a total freight revenue of $747,000, and small passenger, mail, express, switching and other minor earnings which would give it a total annual revenue of about $870,000. It is estimated that 60 per cent of this freight tonnage would be traffic which now moves by rail over longer distances, and 40 per cent would be new traffic."

The cost of road and equipment was estimated at $4,072,376. The applicant estimated that its annual percentage of return would be 4.02 per cent, but predicted a much larger income for succeeding years without giving definite figures. In its conclusion of the report the Commission said:

"We can not find in this record that degree of assurance of a reasonably successful enterprise which we believe the record should indicate to warrant us in issuing a certificate of convenience and necessity to the applicant. If the territory tributary to the proposed new line is capable of supporting a railroad such as is here in contemplation the facts should be brought before us with such completeness that a conclusion warranting the granting of an application may be predicted thereon with that degree of certainty which every well-planned enterprise contemplates. We do not mean to imply that the applicant must make a showing which will eliminate all or even substantial risk because all railroad enterprises are subject to risks which the best human foresight can not anticipate. The present record, however, raises serious doubts regarding the probable success of the project. If the new line should be constructed, many people would doubtless build homes, schools, churches, commercial and industrial establishments which, once constructed, would become and remain primarily dependent upon the projected railroad. In the event of failure of the new line these people would generally suffer more heavily than those who invest their money directly in the enterprise.

"If the record now before us is not as strong as it can be made and the parties interested in this project desire to supplement the existing record early opportunity to do so will be afforded."

Objection was made by the Michigan public utilities commission on the ground that the federal commission had no jurisdiction in the matter and that the applicant must obtain approval of the state commission. The Commission made no comment on this contention.

### C. & O. EQUIPMENT FINANCING

The Commission has authorized the Chesapeake & Ohio Railway Company, by an order in Finance Docket No. 1100, to enter into a proposed equipment trust under which trust certificates amounting to $4,500,000 will be issued to finance in part the purchase of equipment estimated to cost $8,118,050. The company plans to buy 20 freight locomotives at $1,799,800; 5 switching locomotives at $318,250 and 1,000 100 ton steel cars for $6,000,000. Part of the funds needed to procure the equipment will be derived from a loan of $3,759,000 from the government which has been approved by the Commission. The company is authorized to sell the trust certificates at not less than 95 per cent of par and accrued dividends and that the total cost to the applicant shall not exceed 7½ per cent per annum.

## REVENUE FREIGHT LOADING

*The Traffic World Washington Bureau*

The number of cars of revenue freight loaded in each district in the week ending December 4 and in the corresponding week of 1919 was as follows:

Eastern district: Grain and grain products, 6,391 and 6,714; live stock, 3,718 and 4,431; coal, 60,454 and 29,671; coke, 2,790 and 4,080; forest products, 6,421 and 7,935; ore, 7,092 and 2,269; merchandise, L. C. L., 45,994 and 35,013; miscellaneous, 78,629 and 102,905; total, 1920, 211,489; 1919, 193,018; 1918, 202,369.

Allegheny district: Grain and grain products, 3,118 and 2,973; live stock, 3,132 and 3,546; coal, 68,942 and 32,917; coke 8,286 and 4,598; forest products, 3,696 and 4,929; ore, 8,723 and 5,175; merchandise, L. C. L., 37,005 and 41,645; miscellaneous 61,114 and 58,777; total, 1920, 194,016; 1919, 164,560; 1918, 190,988.

Pocahontas district: Grain and grain products 97 and 196; live stock, 140 and 174; coal, 21,014 and 23,850; coke, 611 and 531; forest products, 1,701 and 2,231; ore, 124 and 315; merchandise, L. C. L., 2,585 and 170; miscellaneous, 6,047 and 9,928; total, 1920, 32,319; 1919, 37,395; 1918, 35,981.

Southern district: Grain and grain products, 2,997 and 3,095; live stock, 2,235 and 3,253; coal, 33,241 and 14,412; coke, 1,277 and 232; forest products, 16,912 and 19,647; ore, 2,298 and 2,762; merchandise, L. C. L., 37,138 and 19,636; miscellaneous, 33,616 and 57,923; total, 1920, 129,714; 1919, 120,960; 1918, 115,473.

Northwestern district: Grain and grain products, 11,676 and 12,370; live stock, 8,924 and 10,658; coal, 10,851 and 11,106; coke, 1,498 and 478; forest products, 13,529 and 14,361; ore, 6,189 and 1,829; merchandise, L. C. L., 26,617 and 21,118; miscellaneous, 29,345 and 37,532; total, 1920, 108,629; 1919, 109,452; 1918, 120,860.

Central Western district: Grain and grain products, 9,118 and 10,700; live stock, 10,628 and 14,452; coal, 27,880 and 8,189; coke, 457 and 446; forest products, 4,043 and 4,473; ore, 2,240 and 2,692; merchandise, L. C. L., 29,591 and 21,668; miscellaneous, 41,016 and 45,525; total, 1920, 124,973; 1919, 108,145; 1918, 115,739.

Southwestern district: Grain and grain products, 3,712 and 3,686; live stock, 2,126 and 3,060; coal, 7,846 and 1,623; coke, 724 and 550; forest products, 7,669 and 5,901; ore, 529 and 732; merchandise, L. C. L., 16,641 and 14,960; miscellaneous, 31,775 and 25,244; total, 1920, 71,022; 1919, 55,756; 1918, 56,396.

Total all roads: Grain and grain products, 37,103 and 39,734; live stock, 30,903 and 39,574; coal, 230,228 and 121,768; coke, 15,643 and 10,915; forest products, 53,971 and 59,477; ore, 27,195 and 15,774; merchandise, L. C. L., 195,571 and 154,210; miscellaneous, 281,542 and 347,834; total, 1920, 872,162; 1919, 789,286; 1918, 837,806.

Revenue freight loaded the week ending December 11 amounted to 834,897 cars, a decrease of 37,265 cars, as compared with the preceding week. In the corresponding weeks of 1919 and 1918 the loadings totaled 761,940 and 820,202 cars, respectively.

The report of the car service division of the American Railway Association also shows that as compared with the corresponding week of 1919 there were increases in the loading of coke, ore, coal and merchandise, with decreases in grain and grain products, live stock, forest products and miscellaneous freight, while compared with the week ending December 4 this year decreases were shown in the loading of all classes except live stock and coal.

Reports made to the division also show that for the week ending December 18 the production of bituminous coal exceeded the twelve million ton mark again, the estimate being 12,300,000 tons, a reduction of 565,000 tons as compared with the preceding week. It was estimated that 222,430 cars were loaded with soft coal in the week ending December 18, a decrease of 10,427 cars, as compared with the preceding week.

## FREIGHT OPERATING STATISTICS

*The Traffic World Washington Bureau*

The bureau of statistics of the Commission, December 18, issued its review of freight operating statistics for the month of September. The main figures in the review have been published heretofore. In its introduction to the series of tables in the review the bureau said:

"It is noted that the roads during the month of September, 1920, produced in exclusive freight service 40,651,000,000 net ton-miles. This performance exceeds that of September, 1919, by 1,973,000,000 net ton-miles. The volume of traffic in September, 1920, shows a decrease of 2,000,000,000 net ton-miles as compared with August of this year, while a comparison of the corresponding months of last year shows an increase of 2,262,000,000 net ton-miles. It should be recalled that there was a rush in August to take advantage of the old freight rates. This decline in September of this year and the increase recorded in September of last year result in reducing the percentage of increase in September, 1920, over same month of 1919 to 5.1 per cent as against a 17.1 per cent increase shown for August.

"The tables indicate that while the volume of traffic increased 5.1 per cent, the freight train-miles increased 6.7 per cent. The loaded car-miles show an actual decrease of 0.7 per cent, the increase in train-miles being in part explained by an increase of 13.0 per cent in empty car-miles. Because of the increase in empty car-miles, the average train-load shows a decrease of 1.4 per cent, while the carload increased 6.0 per cent. As indicated, the per cent loaded of total car-miles shows a decrease of 4.0 per cent and the car-miles per car-day increased 6.4 per cent. The net ton-mile per car-day shows an increase of 7.8 per cent. The cost per freight-train-mile of locomotive repairs, enginemen, trainmen, fuel, enginehouse expense and other locomotive and train supplies shows for the total an increase of 31.3 per cent.

"During the nine months' period ended with September, 1920, there were produced by Class I roads in exclusive freight service, 330,964,000,000 net ton-miles, being an increase of 44,062,000,000 net ton-miles or 15.4 per cent over the same period of 1919; and over the same period of 1918 the increase is 6,645,000,000 net ton-miles or 2 per cent. Train-miles increased 14.3 per cent over September of last year and the loaded car-miles increased 12.6 per cent. The train-load increased 1 per cent and the car-load increased 2.5 per cent. The per cent loaded of total car-miles increased 2.4 per cent; car-miles per car-day increased 8.1 per cent and the net ton-miles per car-day, the resultant of car-load, per cent of loads and car-miles per car-day and which is the ultimate measure of freight car utilization, although not necessarily of efficiency, shows an increase of 13.3 per cent. The cost per freight train-mile selected expense accounts referred to in the comparisons for the month shows for the period an increase of 21.6 per cent over the corresponding period of 1919."

### CAR ACCUMULATIONS

Car accumulations in the week ended December 10 amounted to 27,047 cars, as compared with 21,991 the preceding week, according to compilations made by the car service division of the A. R. A. Of the 27,047 cars, 9,947 were held at tidewater ports, as compared with 7,368 the preceding week. The increase in the accumulations was due to the increase at tidewater and to the holding of cars at coal mines.

### CAR SURPLUS AND SHORTAGE

Average car surplusages for the week ending December 15 were 103,849, as compared with 74,195 the preceding week. Deferred car requisitions amounted to 12,377, as compared with 14,945 the preceding week.

## CO-OPERATION UNDER 13TH SECTION

*The Traffic World Washington Bureau*

A novel situation, permitting the Commission to invoke the co-operative part of section 13 of the interstate commerce law, has arisen at Oakland, Calif. The Southern Pacific, in November, ordered the Atchison, Topeka & Santa Fe to oust itself from the Sixteenth Street terminal of the Southern Pacific at Oakland, within thirty days. The thirty days would have expired on December 6, but Mayor Davis, of Oakland, sued out an injunction. The California commission took the matter up. The Southern Pacific not only denied the jurisdiction of the state commission but the federal body as well.

Mayor Davis brought the matter to the attention of the federal body. The latter asked the presidents of the two companies to suspend any further action until the Commission could hold an investigation. Commissioner Meyer, who was a strong advocate of co-operation between state and federal authorities even before the thirteenth section was changed so as to make it the duty of the Commission to seek co-operation, obtained the consent of the California commission to act as the agent of the federal body to conduct the necessary investigation and on December 20, the federal Commission instituted an investigation on its own initiative (Ex Parte No. 77, Joint Use by Southern Pacific Company and Atchison, Topeka & Santa Fe Railway Company at Oakland, Calif.), assigning the case for hearing before the California Railroad Commission at its office in the Flood building at San Francisco at 10 o'clock, December 28. Notice of the hearing has been served on the two railroad companies and all others who may be interested, by posting a copy of the order instituting the proceeding in the office of the secretary.

This designation of the California commission to hear the case is with a distinct reservation, by the state body, of all its powers as a state body claiming jurisdiction over things in California within the scope of its authority.

In view of the position taken by the Southern Pacific at the hearing called by the California commission, it would not be considered surprising if that company, on December 28, refused to proceed with the matter until after it had challenged the right of either body to interfere in a matter between the two companies to terminate an arrangement made for them by the Railroad Administration while it was in control of the property of the two companies and operating it as a single railroad.

Under government control the Railroad Administration directed the use of the Sixteenth Street terminals of the Southern

Pacific in Oakland by the Santa Fe and the Western Pacific. The Santa Fe is still using those terminals but the Western Pacific betook itself from them some time ago. Unofficially the report has been received in Washington that the Santa Fe is willing to get out but that it could not do so in the time allowed.

In the event the jurisdiction of the Interstate Commerce Commission is challenged it will claim the authority to pass on the question of the Santa Fe getting out under the part of the first section giving it power to pass on the question of abandoning operation of any part of its line. At the time the law was passed the Santa Fe was using part of the Southern Pacific as its line into Oakland. The Southern Pacific had not consented to that arrangement. In fact, it was not asked whether it would hospitably receive its competitor. Another part of the revised interstate commerce law which may be invoked as authorizing the Commission to deal with the subject is that part authorizing the federal body to require the joint use of terminals. It did not direct the Santa Fe and the Southern Pacific to make joint use of the terminals of the latter. There has been no reason for such an order since the termination of federal control, but in the event that the hearing should disclose a situation requiring the joint use, issuance of an order would be equivalent to an order requiring the companies to continue an arrangement order into effect by the Railroad Administration which was in effect at the time when the law authorizing the Commission to require such arrangements to be made was passed.

## POSITIONS WANTED OR OPEN

GOOD TRAFFIC MEN ARE MORE THAN EVER IN DEMAND and THE TRAFFIC WORLD is the logical medium for getting the men and the positions in touch with each other. The rates for classified advertisements are as follows: First insertion, $1.00 per line, minimum charge, $3.00; succeeding insertions, per line, 60c; [illegible] words to the line, numbers and abbreviations counted as words, [illegible] point type, payable in advance. Answers to keyed advertisements forwarded free and all correspondence held in strict confidence. The TRAFFIC WORLD, 418 South Market Street, Chicago, Ill.

POSITION WANTED—Former railroad traffic official, last two years and at present with one of the largest concerns in the country as general traffic manager, open for any good proposition. Address O. T. T. [illegible], Traffic World, Chicago.

POSITION WANTED—By high grade traffic man, good personality, [illegible] fifteen years' successful record with big system at important cities, from contracting agent to assistant general freight agent, with additional experience as traffic manager of an industrial concern. Address M. K., Traffic World, Chicago, Ill.

POSITION WANTED—Traffic executive holding important railway position qualified as examiner Interstate Commerce Commission seeks wider field. Address R. E. E. 301, care Traffic World, Chicago, Ill.

POSITION WANTED—Traffic Manager or Assistant. Ten years' railroad and four years' industrial experience. Excellent knowledge of claims, routings, rates, tariff file and general traffic work. Would like to connect with industrial concern, preferably in the vicinity of New York City. Age 34 years. Address O. N. A. 311, Traffic World, Chicago, Ill.

WANTED—Position as Traffic Manager with industrial or commercial concern. Ten years' railroad experience supplemented with La Salle [illegible]. Now employed. Single. Wish to better my condition. Address [illegible], Traffic World, Chicago, Ill.

WANTED—[illegible] tariff file. In writing specify tariffs on hand, [illegible]. Will return index if forwarded for [illegible]. Address [illegible] W. [illegible] 312, Traffic World, Chicago, Ill.

## CONVENIENCES FOR EMPLOYES

*The Traffic World Washington Bureau*

Representative Bland, of Indiana, has introduced in the House a bill (H. R. 15187) which would add a new section to the interstate commerce act providing that "each carrier by railroad subject to this act shall establish and maintain at all places where twenty or more of its employes are customarily employed in interstate commerce or where twenty or more of its employes employed in interstate commerce customarily begin or end their day's work, such wash rooms for their use as may be required for their health or safety, including, when required for such purpose, facilities for changing clothes before and after work.

The bill further provides that the Interstate Commerce Commission, after due notice and hearing thereon, may order carriers to provides such facilities, provided that the expense involved would not impair the carrier's ability to perform its duties to the public. A penalty of $100 a day is fixed for carriers who disobey an order by the Commission under the act.

## FREIGHT RATES ON EXPORT GRAIN

The Board of Trade of Kansas City, Mo., issued a statement and brief, under date of December 10, protesting Sec. 28 of the merchant marine act as being unfair to grain exporters and to various grain ports.

It is pointed out in the statement that many of the Kansas City grain dealers have already made contracts, and that the present policy of suspending the provisions of this section for short periods introduces an element of uncertainty, which is hazardous to present contracts and prevents the making of further contracts. Furthermore, it is stated, most grain is purchased for export on an f. o. b. port basis and the grain dealer has no means of providing that it be shipped in American bottoms.

With regard to the administration of the act, it is requested that, in connection with the Shipping Board's request for suspensions (recently granted), the board should act more promptly and give the shipping public ample advance notive of its findings in order that merchants may be able to do business on a certain basis. It was considered even more important that the interstate Commerce Commission make public as soon as possible the terms and conditions on which the suspension would be allowed, since there was no way for the shipping public to anticipate the commission's action. It was also requested that it be made clear that the date of expiration of the period of suspension, in the present case January 1, 1921, relates to the movement from the interior and not to the movement of the vessel from the port.

In discussing the unfairness of the operation of Sec. 28, the Kansas City Board of Trade does not question the wisdom of the policy which finds expression in that section. It does ask, however, that the penalties for shipping in foreign tonnage should be uniformly imposed through various ports. In their present form the railroad export rates bear no uniform relationship to the domestic rates between the same points, it is stated, and the result, it is contended, is not so much to favor the American merchant marine as to handicap certain ports in competition with others. The facts of the situation are illustrated by the following rates on wheat from Kansas City to various ports:

| To | Rates in Cents Per 100 Pounds Domestic | Export | Difference |
|---|---|---|---|
| New York | 55 | 53.5 | 1.5 |
| Boston | 57 | 53.5 | 3.5 |
| Philadelphia | 53 | 52.5 | .5 |
| Baltimore | 52 | 52 | .0 |
| Galveston | 38 | 38 | .0 |
| | 50 | 38 | 12.0 |

This table purports to show that the foreign buyer can purchase wheat for delivery at Baltimore and New Orleans without regard to the nationality of the vessel used. Since, however, the foreign purchaser does not stand the freight charges, it is pointed out, he is just as liable to make his bid for delivery to the port of Galveston, making the American who sells the grain pay the higher domestic rate if a foreign vessel is used. As a matter of fact, it is stated, this provision, while benefiting the American merchant marine in no way, operates to reduce the farmer's price for his grain.

It is also requested that the discrimination against those ports which have substantial differences between their export rates and their domestic rates, in favor of those ports which have an equality of but a small difference in these rates, be corrected as soon as possible. It is pointed out that, for example, the port of New Orleans is inadequately equipped to handle the volume of grain that is moving toward that port. On the other hand, the port of Galveston is being abandoned by that class of traffic.

Although it is not intended to show that the Shipping Board is vested with discretion to amend the alleged discrimination, Chairman Benson of that body is quoted as saying: "We are anxious to see all ports developed along normal lines and utilized to their full capacity."

The statement, which bears the signature of Walter R. Scott, transportation commissioner of the Kansas City Board of Trade, closes with the request that Congress carefully consider Sec. 28, inasmuch as the purpose manifested by it can be executed with a greater degre of effectiveness and at the same time be made to deal fairly with the port cities. Regardless of how laudable the desire may be to build up a great American merchant marine, it is argued, this should not be done at the expense of these other interests.

## NEW SHIPS TO BE BUILT

*The Traffic World Washington Bureau*

Approval of the construction of four ships of a total tonnage of approximately 30,000 tons under that part of the merchant marine act which exempts the builders of the vessels from the payment of excess profits taxes for ten years was given by the United States Shipping Board December 15. The Alaska Steamship Company will build a 6,000 ton cargo motorship at Tacoma, Wash., the Calvert Navigation Company will build a 10,200 ton steel tanker at Tacoma, and the Sinclair Navigation Company will build two tankers of 6,900 tons each at Bethlehem, Pa.

## CHARTER OF GOVERNMENT SHIPS

*The Traffic World Washington Bureau*

The United States Shipping Board would be directed and authorized to charter government-owned ships under its control to responsible persons making application therefor if a bill (H. R. 15189) introduced in the House by Representative Hulings of Pennsylvania should become a law.

The charter plan for handling the Shipping Board's vessels is being advocated by steamship owners, but the board has indicated that the present arrangement whereby the operator of a Shipping Board vessel is allowed a certain percentage on the amount of freight handling will be tried out first before serious consideration is given to the charter plan.

The Hulings bill provides for the chartering of vessels on the following terms:

First—That any such charters shall be granted only to American citizens to be operated under the American flag and American navigation laws.

Second—That the Shipping Board shall be at the expense of keeping the ships so chartered insured and properly repaired.

Third—That the rental charged for the use of any such ship shall be fixed in the discretion of the board so as to permit such ship when operated with ordinary care to successfully compete with foreign ships engaged in substantially the same trade.

Fourth—That said board in fixing the rentals may discriminate between ships engaged in different trades so as to enable them to meet foreign competition and yet so far as possible to secure a reasonable compensation for the use of said ships.

### SOUTHERN RATE COMMITTEE DOCKET

The Southern Freight Rate Committee announces that, effective January 1, the standing sub-committees at Atlanta, Jacksonville, Louisville, Memphis, New Orleans and Richmond, established for the purpose of affording those interested an opportunity to express their views on propositions contemplating changes in rates, rules, regulations, and practices within the territory of this committee, will be abolished.

Effective Monday, January 10, and each Monday thereafter, the Southern Freight Rate Committee will hold at its offices in Atlanta public hearings at which shippers and shippers' representatives may appear and express views with respect to subjects docketed for consideration on such dates. The committee will continue to publish a weekly docket indicating contemplated changes in rates, rules, regulations, and practices, with dates of hearings. These dockets are printed in The Daily Traffic World and in The Traffic Bulletin.

### C. & N. W. BONDS

The Chicago & North Western Railway Company has applied to the Commission for authority to issue and sell the company's general mortgage gold bonds of 1987 in the principal amount of $440,000, bearing interest at the rate of 5 per cent per annum, to reimburse its treasury for expenditures made out of income, in the retirement of $440,000 of Wisconsin Northern Railway Company first mortgage bonds. It further asks authority to issue and sell $416,000 of its first and refunding mortgage gold bonds, bearing 6 per cent interest, to reimburse its treasury for expenditures made out of income in the retirement of $416,000 of Mankato & New Ulm Railway Company first mortgage bonds, and to issue and sell $1,000,000 of 5 per cent general mortgage gold bonds of 1987 to reimburse its treasury for moneys expendid out of income during the calendar year ending December 21, 1920, in the permanent improvement of and additions to the property subject to its general gold bond mortgage of 1987. The applicant states that no negotiations have been made looking to the sale of the bonds, but that they will be sold at par or at an average price of not less than 90 per cent of par.

## TELEPHONE REVENUE

*The Traffic World Washington Bureau*

The September statement by the bureau of statistics of the Commission of the earnings of telephone companies having annual operating revenues in excess of $250,000 shows that the operating income amounted to $7,525,913, an increase of $2,900,778 over the income for September, 1919. Operating revenues amounted to $41,736,621 as against $34,996,074 in September, 1919, and operating expenses totaled $31,690,376 as compared with $27,973,999 in September last year.

In the nine months ending with September the operating income amounted to $60,324,636 while in the same period of 1919 the income was $56,360,288. Operating revenues amounted to $359,287,217 as compared with $298,734,993 in 1919, and operating expenses, $274,988,939 as against $220,951,809 in 1919.

### LOAN TO NEW YORK CENTRAL

The Commission has approved a loan of $26,775,000 to the Michigan Central, Big Four, Cincinnati Northern, Toledo & Ohio Central, Zanesville & Western, Kanawha & Michigan, and Lake Erie & Western, subsidiaries of the New York Central, and also the New York Central Railroad itself to aid in providing new equipment and additions and betterments at an estimated cost of $56,625,000.

### CENTRAL VERMONT BONDS

In a supplemental order in Finance Docket No. 5, the Commission has authorized the Central Vermont Railway Company to issue not to exceed $1,359,000 of refunding 5 per cent gold bonds to pay and satisfy in full indebtedness of that amount to the Grand Trunk Railway Company of Canada, which owns a majority of the capital stock of the applicant.

### CENTRAL OF GEORGIA SPUR

The Central of Georgia Railway Company has filed an application with the Commission for approval of the construction of a spur 6.78 miles in length from its main line at McCombs Station, 12.5 miles east of Birmingham, Ala., to the lower Cahaba coal fields in Jefferson County, Alabama, and to retain the excess earnings from operation thereof, for a period of ten years, as provided in the transportation act.

### MINGO VALLEY EXTENSION

The Mingo Valley Railroad Company of Pennsylvania has petitioned the Commission for a certificate authorizing it to construct and operate three miles of railroad extending from its terminus on the Monongahela River, near the mouth of Mingo Creek, to a point three miles distant on Mingo Creek, in Washington County, for the purpose of reaching a large field of gas and by-product coal. It also asks permission to retain excess earnings for a period of ten years, as provided in the transportation act.

### RARITAN RIVER STOCK ISSUE

The Raritan River Railroad Company of New Jersey has filed an application with the Commission asking authority to issue $160,000 of additional capital stock, for the purpose of partially reimbursing the treasury of the company for moneys expended from income for investment account and uncapitalized.

### ORDER MODIFIED

The Commission has modified its order in No. 10798, Chicago, Lake Shore & South Bend Railway vs. Lake Erie & Western, Director-General, et al., so as to allow the carriers concerned to establish the through routes and joint rates ordered in the report and order of August 4, the effective date of which was later changed to November 10, on not less than five days' notice. In this case the Commission ordered the trunk line connections of the complaining electric road to enter into through route and joint rate arrangements within a specified period. The tariffs could not be prepared. The order now stands that the trunk lines may make their tariffs on five days' notice when they get them ready.

### EXPRESS COMPANY CLAIMS

The Southern Pacific League has asked for a re-argument in the Express Consolidation case, with a view to having the Commission prescribe terms and conditions as to settlement of loss and damage claims of the Southern and Adams companies.

### NO BRITISH PORT CONGESTION

"A slump in freight rates and a general depression in shipping has entirely overcome previous congestion in the British ports," Consul General R. P. Skinner at London has cabled to the Department of Commerce. "At Swansea, formerly the most congested port, shipping is declining because of reduced output of tinplate, but coal shipments are continuing steadily. Southampton reports the establishment of a bunkering depot by the British-Mexican Petroleum Co. to compete with Anglo-American Oil Co. bunkers. The transport workers' strike at Bristol has been settled, permitting prompt discharge of vessels. Edinburgh reports unemployment among dockers and seamen. Glasgow reports a strike at Greenock of men discharging sugar cargoes. The tugboat strike at Newcastle still continues, causing vessels to avoid port."

### I. C. C. DEFICIENCY APPROPRIATION

The Secretary of the Treasury has submitted to the House a request of the Interstate Commerce Commission for a deficiency appropriation of $1,540,400 for the present fiscal year. The appropriation is needed to meet general expenses of $500,000; to enforce safety sections of the act to regulate commerce, $30,400; to enforce boiler inspection section of the act, $10,000, and to enforce valuation provisions of the act. $1,000,000.

### APPROPRIATION FOR SHIPPING BOARD

A deficiency appropriation of $95,021,500 for the current fiscal year has been requested by the United States Shipping Board. Secretary of the Treasury Houston transmitted the request to the House of Representatives.

### L. & H. R. STOCK ISSUE

The Lehigh & Hudson River Railway Company has been authorized by the Commission under an order in Finance Docket No. 1068 to issue and sell at not less than par $2,987,000 of additional capital stock, the proceeds to be used to retire $2,587,000 of bonds issued under a mortgage of July 1, 1890, and $400,000 of debenture bonds issued under a trust agreement dated May 1, 1907. "The retirement of these bonds will have the result of wholly freeing the applicant's franchises and property from any mortgage or lien," the Commission said in its report. "Originally the applicant's authorized capital was $1,720,000. Recently [illegible] charter has been amended increasing its authorized capital stock to $5,000,000.

### CLAIMS OF WOODEN SHIPBUILDERS

A hearing will be held before the Shipping Board January 7 for the presentation of testimony in connection with claims of builders of wood ships resulting from cancellation of contracts by the Emergency Fleet Corporation.

# Digest of New Complaints

No. 11875, Sub. 2. The Republic of France vs. J. B. Payne, as agent. Unjust and unreasonable storage charges on steel articles in New York Harbor. Asks repration of $10,345.18.

No. 11875, Sub. No. 3. Republic of France vs. J. B. Payne, as agent. Same complaint. Asks reparation of $71,844.05.

No. 11875, Sub. No. 4. Republic of France vs. Pennsylvania. Same complaint. Asks for reparation of $2,531.77.

No. 11947, Sub. No. 1. Armour & Co., Fort Worth, Tex., vs. Mo. Pac. et al.
Unjust and unreasonable rates and charges on shipments of live hogs from Nashville, Tenn., to Fort Worth. Ask for just and reasonable rates and reparation amounting to $29,600.

No. 11964, Sub. No. 1. P. Koenig Coal Co., Detroit, vs. L. & N. et [illegible]
Unjust and unreasonable charges on coal by reason of failure to absorb switching charges at Seven Mile Road, within the limits of Detroit. Asks for the definition of switching limits and reparation.

No. 11964, Sub. No. 2. Same vs. C. & O. et al.
Same as preceding. Same prayer.

No. 11964, Sub. No. 3. Same vs. T. & O. C.
Same as preceding and same prayer.

No. 11964, Sub. No. 4. Same vs. Lehigh Valley et al.
Same as preceding.

No. 11982. A. & C. Mill Co. et al., Seattle, Wash., vs. Aberdeen [illegible] Rockfish et al.
Unjust, unreasonable, unjustly discriminatory and unduly prejudicial rates on cedar shingles from points of origin in Washington, Oregon and British Columbia to interstate destinations in the United States and Canada because they exceed basic lumber rates. Ask cease and desist order, rates no higher than basic lumber rates and reparation.

No. 11983. Moshassuck Valley R. R. Co. vs. N. Y. N. H. & H. et al.
Asks for larger divisions out of joint through rates.

No. 11988. The Fox Paper Co. et al., Lockland, O., vs. J. B. Payne, as agent.
Unjust and unreasonable rates on coal from Big Bein and Seelyville, Ind., to Crescentville and Rialto, O. Asks reparation.

No. 11989. Kentucky Wholesale Co., Inc., Pikeville, Ky., vs. J. B. Payne, as agent.
Unjust, unreasonable, unduly prejudicial and discriminatory rates on canned food products from Phelps, N. Y., to Pikeville, Ky. Asks reparation.

No. 11992, Sub. No. 1. Same vs. J. B. Payne et al.
Same allegations. Asks reparation of $297,284.61.

No. 11992. The Republic of Francs vs. West Shore R. R. et al.
Same complaint. Asks reparation of $74,451.02.

No. 11993. Birmingham Rail and Locomotive Co., North Birmingham, Ala., vs. J. B. Payne et al.
Unjust, unreasonable, unjustly discriminatory, unduly preferential and prejudicial rates on railway track material between Cossawatchie, S. C., and North Birmingham, Ala. Asks rate not exceeding $6.50 per gross ton and reparation.

No. 11994. C. H. Robinson Co., Grand Forks, N. D., vs. American Ry. Express Co.
Unjust and unreasonable charges on crated strawberries from Villa Ridge, Ill., to Minneapolis, Minn., and subsequently diverted to Grand Forks, N. D., stopped in transit at Fargo, N. D., for partial unloading. Asks cease and desist order and reparation.

# Docket of the Commission

**Note. Items in the Docket marked with an asterisk (*) are new, having been added since the last issue of The Traffic World. Cancellations and postponements announced too late to show the change in this Docket will be noted elsewhere.**

December 27—Argument at Washington, D. C.:
11283—Miami Copper Co. vs. Arizona Eastern et al.
11479—Consolidated Gas, Electric Light and Power Co. of Baltimore vs. Canadian Pacific et al.
11403—Nestle's Food Co., Inc., vs. Mobile & Ohio et al.

December 28—San Francisco, Calif.—R. R. Commission of California:
* Ex parte 77—Joint use by Sou. Pac. Co. and A. T. & S. F. Ry. Co. of terminals owned by Sou. Pac. Co. at Oakland, Calif.

December 28—Argument at Washington, D. C.:
11275—Carnegie Steel Co. vs. Pittsburgh & Ohio Valley et al.

January 3—Richmond, Va.—Examiner Hillyer:
11976—Bedford Pulp and Paper Co. vs. Chesapeake & Ohio and Director General.

January 3—Los Angeles, Calif.—Examiner Hartman:
Valuation Docket 26—In re San Pedro, Los Angeles & Salt Lake R. R. Co. (The purpose of this hearing is to complete the testimony respecting the present value of land contained in Valuation Section 1 and the scope of the hearing will be confined to that issue.)

January 3—Louisville, Ky.—Examiner McQuillan:
11936—Coral Ridge Clay Products Co. vs. Director General.

January 3—Chicago, Ill.—Commissioner Ford:
I and S. 1250 and first sup. order—Diversion and reconsignment rules, regulations and charges.

January 3—Philadelphia, Pa.—Examiner Gaddess:
11918—E. I. DuPont de Nemours & Co. vs. Pa. et al.
11918 (Sub. No. 1)—E. I. DuPont de Nemours & Co. vs. Director General.
11920—E. I. Du Pont de Nemours & Co. vs. Director General.
11953—E. I. Du Pont de Nemours & Co. vs. Director General and Raritan River.

January 3—Philadelphia, Pa.—Examiner Gaddess:
* 11919—E. I. Du Pont de Nemours & Co. vs. Director General.

January 4—St. Louis, Mo.—Examiner Fleming:
*I. and S. 1259—Acid from Hillsboro, Ill., to Ohio River points.
I. and S. 1252—Sulphur and brimstone from Louisiana and Texas pts.

January 4—Buffalo, N. Y.—Examiner Pattison:
I. and S. 1248 and first supplemental order—Allowances to plant facility railroads at Buffalo.

January 5—Atlanta, Ga.—Examiner Hillyer:
11926—Cannon Mfg. Co., Kannapolis, N. C., vs. Director General and Southern.

January 5—Washington, D. C.—Examiner Oberlin:
* Finance Docket 1117—In the matter of application of Fernwood, Columbia & Gulf R. R. Co. for authority to issue $300,000, principal amount, of refunding mortgage bonds.

January 5—Spokane, Wash.—Examiner Keeler:
11840—Inland Empire Paper Co. vs. Spokane International and Director General.
11840 (Sub. 1)—Inland Empire Paper Co. vs. C. M. & St. P. et al.
11840 (Sub. 2)—Inland Empire Paper Co. vs. Oregon-Washington R. R. and Nav. Co. et al.
11840 (Sub. 3)—Inland Empire Paper Co. vs. C. M. & St. P. et al.

January 5—Washington, D. C.—Examiner Butler:
I. and S. 1240 and first sup. order—Water competitive rates on lumber.
* I. and S. 1240 (second supplemental order)—Water competitive rates on lumber.

January 5—Argument at Washington, D. C.:
10745—National Wholesale Grocers' Assn. of the U. S. vs. Alabama & Vicksburg et al.
10745 (Sub. No. 1)—Southern Wholesale Grocers' Assn. et al. vs. Sou. et al.

January 5—St. Louis, Mo.—Examiner Fleming:
11804—Tuffli Bros. Pig Iron and Coke Co. vs. Director General.
11946—Tuffli Bros. Pig Iron and Coke Co. vs. Director General.

January 5—Pittsburgh, Pa.—Examiner Seal:
11977—Mexican Gulf Oil Co. (Pittsburgh, Pa.) vs. Midland Valley et al.
10197—Avella Coal Co. vs. Pittsburgh & West Virginia and Director General.
10197 (Sub. No. 1)—Meadow Lands Coal Co. vs. Pittsburgh & West Virigina and Director General.
10197 (Sub. No. 2)—Waverly Coal and Coke Co. vs. Pittsburgh & West Virginia and Director General.
10197 (Sub. No. 3)—Pryor Coal Co. vs. Pittsburgh & West Virginia and Director General.
10197 (Sub. No. 4)—Duquesne Coal and Coke Company vs. Pittsburgh & West Virginia and Director General.
10197 (Sub. No. 5)—Pittsburgh Southwestern Coal Co. and David L. Newill, receiver thereof, vs. Pittsburgh & West Virginia and Director General.
10197 (Sub. No. 6)—Ferguson Coal and Coke Co. vs. Pittsburgh & West Virginia and Director General.

January 5—Nashville, Tenn.—Examiner McQuillan:
9190—Murfreesboro Board of Trade, Murfreesboro, Tenn., et al. vs. Louisville & Nashville et al.
Fourth Section Order 7566—Class and commodity rates to Nashville, Tenn.

January 5—New York, N. Y.—Examiner Gaddess:
11958—Valentine Scheidell and Henrietta M. Scheidell, co-partners, doing business as the Sullivan Count Creamery Co., vs. Director General.
11922—J. B. Schank, J. I. Hutchinson, Sr., and H. R. Field, trading as Schanck, Hutchinson & Field, vs. Pa. et al.

January 6—Argument at Washington, D. C.:
10704—Tidewater Oil Co. vs. C. of N. J. et al.
10816—Three Lakes Lumber Co. et al. vs. Washington Western et al.
8167—Three Lakes Lumber Co. et al. vs. Washington Western et al.
I. and S. 193—Joint rates with the Washington Western Ry. Co.

January 6—St. Louis, Mo.—Examiner Fleming:
11631—Merchants' Exchange of St. Louis, Mo., vs. B. & O. et al.
11636—St. Louis-San Francisco Ry. Co. vs. Nor. Ala. et al.

January 6—New York, N. Y.—Examiner Gaddess:
11979—United Paperboard Co., Inc., vs. Canadian National Rys. et al.
11970—M. Argueso & Co., Inc., vs. Galveston, Harrisburg & San Antonio et al.

January 7—Boston, Mass.—Examiner Pattison:
* 11681—Oxford Paper Co. and Eastern Mfg. Co. vs. Director General.

January 7—Seattle, Wash.—Examiner Keeler:
10540—Pacific Coast Shippers' Assn. vs. Canadian Pacific et al.
11809—Marden, Orth & Hastings Co., vs. C. M. & St. P. et al.

January 7—Argument at Washington, D. C.:
10514—South Bend Chamber of Commerce et al. vs. B. & O. et al.
10858—State of Idaho ex rel., Public Utilities Commission of the state of Idaho, vs. Oregon Short Line et al.

January 7—Shreveport, La.—Examiner McQuillan:
11942—National Glass Co., Inc., vs. Director General.
11921—Solar Refining Co. of Louisiana vs. Director General.

January 7—Little Rock, Ark.—Examiner Hunter:
11927—E. P. Ladd vs. Gould Southwestern et al.

January 7—New York, N. Y.—Examiner Gaddess:
11934—Ætna Explosives Co. vs. C. & E. I. et al.
11951—Ætna Explosives Co. vs. Mo. Pac. et al.

January 7—Boston, Mass.—Examiner Pattison:
11948—The Glacifer Co. vs. Amn. Ry. Express Co.

January 8—Seattle, Wash.—Examiner Keeler:
11832—Thomas W. Simmons & Co. vs. Director General.
11912—Great Western Smelting and Refining Co. vs. Director General and C. M. & St. P.

January 8—Cleveland, O.—Examiner Seal:
11949—The National Refining Co. vs. Director General.

January 10—Washington, D. C.—Examiner Gaddess:
* 11881—Krauss Bros. Lumber Co. vs. Ala. & Miss. et al.
* 11881 (Sub. 1)—Krauss Bros. Lumber Co. vs. Ala., Tenn. & Nor. et al.

January 10—Chicago, Ill.—Examiner Carter:
* 11558—Petition of Chicago, North Shore & Milwaukee R. R.

January 10—Chicago, Ill.—Examiner Quirk:
* I. and S. 1249 and first, second and third supplemental orders)—National car demurrage charges and rules.

January 10—Tacoma, Wash.—Examiner Keeler:
I. and S. 1246—Switching charges to and from South Tacoma, Wash.

January 10—Ft. Worth, Tex.—Examiner Hunter:
9506—The Terrell Commercial Club vs. Tex. & Pac. et al.
I. and S. 1210—Grain and hay between Oklahoma and Texas.

January 10—Atlanta, Ga.—Examiner Hillyer:
11944—Empire Cotton Oil Co. vs. Maxton, Alma & Southbound R. R. Co. of Alma, N. C., et al.

January 10—Kansas City, Mo.—Examiner Fleming:
11706—The Weir Smelting Co. vs. Miami Mineral Belt et al.

January 10—New Orleans, La.—Examiner McQuillan:
I. and S. 1253—Glass and glassware from Oklahoma and Texas.

January 10—Detroit, Mich.—Examiner Seal:
11964—The P. Koenig Coal Co. vs. Hocking Valley et al.
11980—Michigan R. R. Co. vs. Pere Marq. et al.

January 10—Boston, Mass.—Examiner Pattison:
11837—Boston Wool Trade Assn. (for and on behalf of its members) vs. A. T. & S. F.

January 11—Washington, D. C.—Examiner Gaddess:
* 11968—Washington Steel and Ordnance Co. vs. B. & O. et al.

January 11—Chicago, Ill.—Examiner Carter:
* 11699—The National Live Stock Exchange vs. A. T. & S. F. et al.
11700—The National Live Stock Exchange vs. Ann Arbor et al.

January 11—Tacoma, Wash.—Examiner Keeler:
I. and S. 1251—Fuel, pulpwood and wood bolts between North Pacific Coast Lines.

January 11—San Francisco, Cal.—Commissioner Ford:
I. and S. 1250 and first sup. order—Diversion and reconsignment rules, regulations and charges.

January 11—New Orleans, La.—Examiner McQuillan:
11931—Lake Charles Rice Milling Co. of Louisiana vs. Sou. Pac. et al.
11974—Southport Mill, Ltd., vs. B. & O. et al.

January 11—Ft. Worth, Tex.—Examiner Hunter:
11972—M. L. Davis and W. D. Davis vs. Gulf, Colorado & Santa Fe et al.
11975—Montrose Oil Refining Co., Inc., vs. St. Louis-San Francisco et al.

January 12—New York, N. Y.—Examiner Pattison:
* 11833—The Republic of France vs. New York Central et al.
* 11834—The Republic of France vs. Director General and West Shore.
* 11874—The Republic of France vs. West Shore et al.
* 11874 (Sub. 1)—The Republic of France vs. Director General.
* 11875—The Republic of France vs. Director General.
* 11875 (Sub. 1)—The Republic of France vs. Director General and Pennsylvania.
* 11875 (Sub. 2)—The Republic of France vs. Director General.
* 11875 (Sub. 3)—The Republic of France vs. Director General and Pennsylvania.
* 11875 (Sub. 4)—The Republic of France vs. Pennsylvania.
* 11992—The Republic of France vs. West Shore et al.
* 11992 (Sub. 1)—The Republic of France vs. West Shore et al.

January 12—Washington, D. C.—Examiner Gaddess:
* 11961—Wausau Southern Lumber Co. vs. Gulf & Ship Island et al.

## CHANGES IN DOCKET

Argument in 11159, Choate Oil Corporation vs. Chicago, Rock Island & Pacific et al., and 11159 (Sub. No. 1), Home Petroleum Company vs. Atchison, Topeka & Santa Fe et al., assigned for December 21 at Washington, D. C., were cancelled.

Hearing in 11718, the Standard Red Cedar Chest Company et al. vs. Alabama Great Southern et al., fourth section departures, etc., assigned for December 23 at Washington, D. C., was canceled.